

No. 11097

v. 2432

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

WALTER LUBINSKI,
Appellee.

WALTER LUBINSKI,
Appellant,
vs.

ALASKA STEAMSHIP CO., a Corporation,
Appellee.

Apostles on Appeal
In Two Volumes
VOLUME I
Pages 1 to 270

Upon Appeals from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED
OCT 16 1945



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Seattle, Washington [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

United States District Court, Western District of
Washington, Northern Division

In Admiralty, No. 14601

WALTER LUBINSKI,

Libellant,

vs.

ALASKA STEAMSHIP CO., a corporation,
and UNITED STATES OF AMERICA,
Respondents.

LIBEL IN PERSONAM

Action under special rule for seamen to sue without security or prepayment of fees, for the enforcement of the laws of the United States, common and statutory, for the protection of the health and safety of seamen at sea.

Comes now the libellant above named, and, for cause of action against the respondents, complains and alleges as follows:

I.

That now, and at all times hereinafter mentioned, the respondent Alaska Steamship Company was a corporation organized and existing under and by virtue of the laws of the State of Nevada, with its principal place of business at Seattle in the Western District of Washing, Northern Division. That the respondent United States of America was the owner of the SS "George Flavel," a merchant vessel of the United States, and through its agency,

the War Shipping Administration, operated the same jointly with respondent Alaska Steamship Company under some arrangement, the exact nature of which is unknown to libelant. That the libelant is a resident of the Western District of Washington, Northern Division.

II.

That the respondents employed libelant as a boatswain on said vessel on a voyage commencing at San Francisco, California, on the 23rd day of June, 1943, to Alaskan waters, and terminating at Seattle, Washington, on the 28th day of September, 1943.

III.

That on or about the 15th day of July, 1943, while said vessel was in navigable waters at Attu, Alaska, the respondent negligently permitted the stowage of certain smoke signal bombs in the forepeak of said vessel along with the gear of said vessel. That at about the hour of 10:00 o'clock P.M. on said day, a member of the crew of said vessel entered said forepeak for the purpose of obtaining gear, and while there negligently knocked over one of said smoke signal bombs, causing the same to ignite and emit a large quantity of smoke. That libelant was directed by the mate on said vessel to enter said forepeak for the purpose of assisting in extinguishing said fire, and that although he wore a gas mask, the smoke from said bomb permeated said mask and into his eyes. That shortly thereafter both of libelant's eyes became inflamed, and that immedi-

ately thereafter there was some loss of vision in libelant's left eye.

IV.

That on or about the 15th day of August, 1943, a fire occurred in No. 3 hold due to the negligence of the respondents in permitting combustible material to be in and about said hold during the unloading of motor vehicles. That it was necessary to attempt to put out said fire with the use of several hoses, which were lowered into the said hold, and gas masks were used by all of the crew engaged in fighting said fire, including libelant. That one of the members of said crew negligently directed a hose against libelant, striking him and causing the gas mask to be thrown from his face, and again subjecting him to the noxious fumes and smoke, causing further irritation to his eyes.

V.

That as a direct and proximate result of the negligence of the respondents as aforesaid, libelant received a severe [3] intraocular damage to the eyeball, resulting in a uveitis and the development of inflammatory adhesions between the iris and the lens; that he has suffered a complete and permanent loss of vision to the left eye, and that his right eye has been weakened. That there exists a potential focus of infection and damage to his right eye as the result of injury to his left eye. That at the time of receiving said injury, libelant was an able-bodied man of the age of 29 years, with a normal life ex-

pectancy of 36.03 years, capable of earning and actually earning the sum of \$500.00 per month as a seaman. That he left said vessel at the end of the voyage thereof on the 28th day of September, 1943, and was paid his wages to the end of the voyage; that from the 28th day of September, 1943, to the 29th day of February, 1944, libelant was totally incapacitated from following any gainful occupation; that his ability to follow any gainful occupation has been permanently impaired; that he has suffered intense pain in the past and will continue to suffer such pain in the future, to his total damage in the sum of \$25,000.00.

VI.

That on the 2nd day of March, 1944, libelant made a claim in writing upon the respondent United States of America, through its general agent, the Alaska Steamship Company, and that more than sixty days have fully elapsed since the filing of said claim, and the same has been neither accepted nor rejected, and has, therefore, been administratively disallowed.

Wherefore, libelant prays that he have and recover judgment against the respondents, and each of them, in the sum of Twenty-Five Thousand Dollars (\$25,000.00), and for his costs and disbursements in this action incurred.

SAM L. LEVINSON,

Proctor for Libelant.

[Endorsed]: Filed May 11, 1944. [4]

[Title of District Court and Cause.]

ANSWER OF RESPONDENTS

Come now the respondents above named, and in answer to the libel of libelant on file herein, admit, deny and allege as follows:

I.

Answering Article I, respondents admit the corporate allegation as pleaded concerning respondent Alaska Steamship Company. Respondents admit that respondent United States of America was the owner of the S.S. George Flavel, a merchant vessel of the United States, which was being operated at the times alleged in said libel by the War Shipping Administration. Respondents further admit that at said times respondent Alaska Steamship Company, a corporation, was acting as general service agent on behalf of the War Shipping Administration of the respondent United States of America in the servicing of said vessel.

Respondents deny that libelant is a resident of the Western District of Washington, Northern Division.

II.

Answering Article II, respondents admit that the libelant was employed as bo's'n by the respondent United States of America on the above mentioned vessel and during the times alleged in said article.

III.

Answering Articles III, IV and V of the libel, respondents deny each and every allegation therein

contained, and particularly deny that the libelant has been damaged in the sum therein alleged or in any other sum or sums whatsoever by reason of any fault, neglect or liability on the part of the respondents, or either of them.

IV.

Answering Article VI of the libel, respondents admit the same.

Further answering the libel and by way of first affirmative defense thereto, respondents allege:

I.

That if the libelant has been injured and/or damaged as in his libel alleged, or at all, said injuries and/or damages were solely and proximately caused and contributed to by libelant's own neglect and want of due care.

Wherefore, having fully answered the libel of libelant, respondents pray that the same may be dismissed and they recover their costs and disbursements herein to be taxed.

CHARLES F. DENNIS

U. S. District Attorney

G. D. HILE

Asst. U. S District Attorney

BOGLE, BOGLE & GATES

(Of counsel)

Proctors for respondent

U. S. A.

BOGLE, BOGLE & GATES
STANLEY B LONG
EDW. S. FRANKLIN

Proctors for Respondent Alaska
Steamship Company.

[Endorsed]: Filed May 19, 1944.

Copy received May 19, 1944.

SAM L. LEVINSON. [6]

[Title of District Court and Cause.]

COURT'S DECISION

March 2, 1945

The Court: This is a secret file, and what the Court says will not be published; and anyone who might have an interest to do so is directed not to publish or assist in publishing the decision of the Court in any kind of publication, without the further order of the Court.

I find it impossible to believe from the evidence that the libelant and his fellow crewmen believed they were employees of the Alaska Steamship Company.

It is all the more true with the libelant, in view of his leading activities in connection with Union affairs. A man as intelligent and well-informed as the libelant is would not remain uninformed about the true state and relationship of the Alaska Steamship Company under the General Agency Agreement.

I find that the libelant and his fellow crewmen were not employees of the Alaska Steamship Company, but that they were employees of only the War Shipping Administration, which in this case is the alter ego of the United States of America.

With the exception of the allegation as to the amount of damages sustained by the libelant, the Court finds and concludes that a preponderance of the evidence introduced in this case supports the allegations of the libelant's libel, so far as concerns the United States of America, as set forth in Paragraphs I, II, III, IV, V and VI of the libel.

I think it is clearly established that there was negligent stowage of this smoke bomb. By direction of an officer of the ship the smoke bombs including the one in question were removed from the deck and stowed in the [8] forepeak among the ship's stores. Whether there were any regulations determining the method and location of stowage or not, it was well known to those employed on the ship that smoke bombs should be left out on deck, where escaping gases would not be confined to produce discomfort and danger to persons, and where they would be more accessible for immediate and emergency use.

It seems obvious to the Court from the testimony in the case that to stow smoke bombs, as these were, in the forepeak, where the containers might be disturbed by persons rightfully using the space in the course of their duties and allow smoke and gas to escape from the containers and remain confined in the forepeak space, created a danger which might

foreseeably result in harm to some person rightfully going into the forepeak space.

The mere fact that some persons, other than the libelant, used this space without injury while the gas was escaping from this smoke bomb, does not in the Court's mind disprove the contention of libelant that he was injured by the smoke and gas which may have been produced by it. Some men assume certain risks without any deleterious after effects; but others exposed to the same dangers may suffer deleterious effects from the experience. The Court is convinced by the evidence that libelant's eyes were injured at Attu by the smoke and gas from the smoke bomb negligently stowed in the forepeak of the vessel.

Likewise I think the libelant has made out a case of negligence so far as the occurrences at Kiska are concerned. I think the standard of ordinary care is sufficient to require a fellow crewman to so manipulate a water hose [9] as not to knock from the face or out of position on the face of his fellow employee a gas mask under the circumstances involved at Kiska. I find that the libelant received such blows from that hose water, and such injuries from those gases and smoke that were there present, as to aggravate the condition resulting from his injuries at Attu a month earlier.

The question of the extent of the injuries and as to whether or not the smoke injury to the libelant's eyes caused the loss of his left eye is perhaps a harder question from the standpoint of the evidence in the case than the question of whether or not the

United States was negligent, and whether or not such negligence proximately caused some injury to libelant.

The greater amount of the medical testimony, as measured by the greater number of witnesses, was to the effect that the kind of eye affliction and damage experienced by libelant could not have been caused by this smoke damage to the eye and that libelant's kind of eye trouble is usually caused by systemic infection; but that medical testimony, which was so positively to the effect that the injury sustained by libelant on board this ship did not cause the damage experienced by the libelant, is less convincing because of the fact that that same medical testimony offered no positive proof of the presence of a systemic cause or any cause different from that asserted by libelant. There was some medical testimony supporting libelant's contention that the smoke bomb injury aggravated by injuries from hose water and smoke at Kiska caused his eye trouble.

It seems to me that, with the aid of modern medical tests, it could have been ascertained certainly whether [10] or not the libelant had any infection in his system; but there was no proof of that at all.

The testimony of Dr. Morrow, who testified in Court, carried great weight; but it failed of that convincing power necessary to a conclusion in favor of the theory of systemic infection which his testimony supported, in view of the fact that Dr. Morrow did not state for a certainty, nor did any other witness state, that there was any systemic infection

to cause the loss of sight in one of libelant's eyes, and because the Court believes from a consideration of all the testimony, lay testimony as well as expert medical testimony, that the injury to libelant's eye was caused by this smoke and attendant gas injury. There isn't anything in the record which certainly proves to the contrary, and the preponderance of the evidence in the record convinces the Court that the cause alleged was the cause of libelant's eye injury.

A further question is to be determined, and that is, what was the extent of libelant's damages? He was getting well paid for his work, and it is possible that he may not have the same opportunity of employment in the deck department in the future that he might have had without this injury to his eye. I am inclined to think that that is reasonably established by the evidence, and I think thereby his future earning capacity will be depreciated.

But I do not believe that the evidence tends to prove, and libelant does not contend, that he will be wholly disabled from carrying on any gainful occupation. It is possible he may be able to find employment in the engine department or other departments of ships that may not require the use of the most efficient eyesight as a prerequisite to [11] employment.

Considering his earning capacity, the extent of his injuries, his life expectancy, and all of the evidence in this case, the Court finds and concludes that the libelant has been damaged in the sum of \$17,500.00, and that he should recover that sum from the re-

spondent United States of America; that the libelant take nothing in this action against the respondent Alaska Steamship Company, and that the libel as to that respondent be dismissed.

Mr. Franklin: Is your Honor going to make any finding on contributory negligence?

The Court: I find that libelant was not guilty of contributory negligence.

(Discussion between Court and Counsel as to a date for settling findings.)

The Court: This matter is continued until a week from this coming Monday, the 12th of March, for settling findings of fact, conclusions of law and decree.

[Endorsed]: Filed Mar. 7, 1945.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for hearing before the Honorable John C. Bowen, one of the Judges of the United States District Court for the Western District of Washington, Northern Division, on the 9th day of January, 1945, at Seattle, Washington, the libelant appearing in person and being represented by his proctor, Sam L. Levinson, and the respondents appearing by their proctors, Messrs. Bogle, Bogle & Gates, Stanley B. Long and Edw. S. Franklin; and the libelant having thereupon intro-

duced his testimony and rested, and the respondents having thereupon introduced their testimony and rested; and the court having continued the matter for argument to the 2nd day of March, 1945; and the respective proctors having filed briefs and memorandums of authorities, and having been heard on the 2nd day of March, 1945; and the Court having duly considered the matter, and having announced its decision, and being fully advised in the premises, now enters the following

FINDINGS OF FACT

I.

That the respondent Alaska Steamship Co., a Corporation, with its principal place of business at Seattle, Washington, in the Western District of Washington, Northern Division, was acting under a general agency agreement in the operation of the SS "George Flavel," a United States vessel, and as such general agent made available to the United States members of the crew of said vessel, [13] and did not employ libelant as a seaman on said vessel.

II.

That the respondent United States of America, through its agency the War Shipping Administration, employed the libelant as a boatswain on said vessel on a voyage commencing at San Francisco, California, on the 23rd day of June, 1943, to Alaskan waters, and terminating at Seattle, Washington, on the 28th day of September, 1943.

III.

That sometime prior to the 15th day of July, 1943, while said vessel was in navigable waters at Attu, Alaska, the officers of said vessel negligently permitted and directed the stowage of certain smoke signal bombs in the forepeak of said vessel, along with the gear of said vessel. That on the 14th day of July, 1943, a member of the crew of said vessel entered said forepeak for the purpose of obtaining gear and while there, knocked over or kicked one of said smoke signal bombs, causing the escapement of a large quantity of gas, smoke and fumes. That libelant, in the course of his employment, entered said forepeak for the purpose of assisting in extinguishing said gas, smoke and fumes therefrom, and that the gas, smoke and fumes therefrom permeated libelant's gas mask and irritated and injured his eyes. That shortly thereafter libelant's eyes became inflamed, and resulted in a loss of vision in his left eye.

IV.

That on or about the 15th day of August, 1943, a fire occurred in No. 3 hold of said vessel, and that in the course of his employment, the libelant entered into said hold wearing a gas mask. That the members of the crew, in fighting said fire, negligently directed a hose against said libelant, striking him in the face and causing the gas mask to be thrown from his face, subjecting him to fumes, smoke and water, and aggravating a pre-existing condition; and that libelant was not contributorily negligent. [14]

V.

That as a direct and proximate result of the negligence of respondent United States of America as aforesaid, libelant received a severe intraocular injury to the eyeball, resulting in a uveitis and an inflammatory condition between the iris and the lens, and that he has suffered a complete and permanent loss of vision to the left eye, and that there exists a potential danger to his right eye as a result of the injury to his left eye; that at the time of receiving said injury libelant was an able-bodied man, with good eyesight, of the age of 29 years, with a normal life expectancy of 36.03 years, and earning approximately \$500.00 per month as a seaman; that he was paid his wages to the end of the voyage of said vessel on the 28th day of September, 1943, and from said date to the 29th day of February, 1944, he was totally incapacitated from following any gainful occupation, and that his earning capacity has been permanently impaired; that he has suffered pain in the past, and now suffers pain on occasions from said eye; that he suffers humiliation and embarrassment by reason of the loss of sight in said eye and the necessity of wearing a covering on said eye; and that his total damage is the sum of \$17,500.00.

Done in open court this 12th day of March, 1945.

JOHN C. BOWEN

Judge

From the foregoing Findings of Fact, the court now enters its following

CONCLUSIONS OF LAW

I.

That as to the respondent Alaska Steamship Co., a corporation, the libel is personam should be dismissed with prejudice, [15] with taxable costs to said respondent.

II.

That libelant recover a judgment against the respondent United States of America in the sum of \$17,500.00, and his costs to be taxed.

To the foregoing Findings of Fact and Conclusions of Law, the libelant, United States of America, excepts, and its exception is hereby allowed.

Done in open court this 12th day of March, 1945.

JOHN C. BOWEN

Judge

Approved: As to Form.

BOGLE, BOGLE & GATES

Proctors for Respondents.

Presented by:

SAM L. LEVINSON

Proctor for Libelant.

[Endorsed]: Filed Mar. 12, 1945.

United States District Court, Western District of
Washington, Northern Division

In Admiralty—No. 14601

WALTER LUBINSKI,

Libelant,

vs.

ALASKA STEAMSHIP CO., a corporation; and
UNITED STATES OF AMERICA,

Respondents.

DECREE.

This Matter having come on before the Honorable John C. Bowen, one of the Judges of the United States District Court for the Western District of Washington, Northern Division, on the 9th day of January, 1945, and being thereafter continued to the 2nd day of March, 1945; libelant appearing in person and by his proctor Sam I. Levinson; and respondents appearing by their proctors, Messrs. Bogle, Bogle & Gates, Stanley B. Long and Edw. S. Franklin; and the court having heretofore entered its Findings of Fact and Conclusions of Law; now, therefore,

It is hereby Ordered, Adjudged and Decreed that the libel in personam be dismissed with prejudice against the respondent Alaska Steamship Co., a corporation, with taxable costs to said respondent.

It is further Ordered, Adjudged and Decreed that libelant have and recover judgment against

the respondent, United States of America, in the sum of Seventeen Thousand, Five Hundred Dollars (\$17,500.00), and his costs and disbursements herein to be taxed.

To all the foregoing the respondent, United States of America, excepts, and its exception is allowed.

Done in Open Court this 12th day of March, 1945.

JOHN C. BOWEN

Judge.

Approved as to form:

BOGLE, BOGLE & GATES

Proctors for respondents.

Presented by:

SAM L. LEVINSON

Proctor for Libelant.

[Endorsed]: Filed Mar. 12, 1945. [17]

[Title of District Court and Cause.]

PETITION OF RESPONDENT UNITED
STATES OF AMERICA FOR APPEAL

The above named respondent, United States of America, being aggrieved by the decree rendered and entered in the above entitled action on the 12th of March, 1945, in favor of libelant and against respondent, United States of America, for the reason specified in the assignment of errors filed

herein, desires to appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit.

Wherefore, the respondent prays that said appeal may be allowed and that said appeal may be made returnable to the United States Circuit Court of Appeals for the Ninth Circuit according to law, and that a transcript of the records, proceedings, papers, and exhibits upon which said judgment was rendered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting in San Francisco in the State of California.

Dated this 2nd day of June, 1945.

J. CHARLES DENNIS

United States District Attorney

By BOGLE, BOGLE & GATES

Proctors for Respondent

United States of America

BOGLE, BOGLE & GATES

STANLEY B. LONG

EDW. S. FRANKLIN

(of Counsel)

Copy Received Jun. 2, 1945.

SAM L. LEVINSON

[Endorsed]: Filed June 2, 1945. [18]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Comes now United States of America, respondent in the above entitled action, having appealed from the final decree entered in the above entitled action on the 12th day of March, 1945, in support of said appeal, makes the following assignments of error:

I.

The Court erred in making finding of fact III for the reason that said finding is not sustained by the weight of the evidence and is clearly erroneous.

II.

The Court erred in making finding of fact IV for the reason that said finding is not sustained by the weight of the evidence and is clearly erroneous.

III.

The Court erred in making finding of fact V for the reason that said finding is contrary to the weight of the evidence and is clearly erroneous.

IV.

The Court erred in rendering the final decree which was entered herein on March 12, 1945, adjudging that the [19] libelant was entitled to recover from respondent, United States of America, the sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00) and his costs and disbursements in said action, for the reason that this portion

of said decree is not supported by the weight of the evidence and is clearly erroneous.

J. CHARLES DENNIS

United States District Attorney

By BOGLE, BOGLE & GATES

STANLEY B. LONG

EDW. S. FRANKLIN

(of counsel) proctors for respondent United States of America.

[Endorsed]: Filed June 2, 1945. [20]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

This cause coming on for hearing upon the petition of respondent, United States of Amreica, for allowance of appeal in the above entitled action to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree in this action entered on the 12th day of March, 1945, and said petition for allowance of appeal having been presented to the Court.

Now, Therefore, said petition is hereby granted and said appeal is allowed.

Done in open Court this 2nd day of June, 1945.

JOHN C. BOWEN

United States District Judge

Presented by :

EDW. S. FRANKLIN

Of proctors for respondent.

Copy received June 2, 1945.

SAM L. LEVINSON

[Endorsed]: Filed June 2, 1945. [21]

[Title of District Court and Cause.]

LIBELANT'S PETITION FOR CROSS
APPEAL.

Libelant, being aggrieved by that portion of the rulings and findings of the United States District Court wherein the respondent Alaska Steamship Company is dismissed with prejudice herein, claims a cross-appeal from that portion of said decree and the rulings and findings in support thereof, and prays that his said appeal may be allowed.

WALTER LUBINSKI

Libelant

By SAM L. LEVINSON

His proctor

ORDER ALLOWING APPEAL

The within appeal is hereby allowed.

Done in Open Court this 18th day of June, 1945.

JOHN C. BOWEN

Judge.

Service acknowledged this 18th day of June, 1945.

J. CHARLES DENNIS

U. S. Dist. Atty.

By BOGLE, BOGLE & GATES
of Counsel

Presented by:

SAM L. LEVINSON

Proctor for Libelant

[Endorsed]: Filed June 18, 1945. [22]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

The libelant, Walter Lubinski, hereby assigns as error on his cross-appeal in the Findings, Decree and Decision of the District Court in the above entitled action as follows:

(1) The District Court erred in entering that portion of Finding of Fact I wherein it states that the respondent, Alaska Steamship Company, did not employ libelant as a seaman on the SS "George Flavel", for the reason that said finding is not sustained by the evidence.

(2) The District Court erred in entering that portion of the decree wherein it is provided that the libel be dismissed with prejudice against the respondent Alaska Steamship Company.

WALTER LUBINSKI

Libelant

By SAM L. LEVINSON

Proctor for Libelant

Service acknowledged June 18, 1945.

J. CHAS. DENNIS

U. S. Dist. Attorney

BOGLE, BOGLE & GATES

[Endorsed]: Filed June 18, 1945. [23]

[Title of District Court and Cause.]

ORDER FOR TRANSFER OF EXHIBITS TO
THE UNITED STATES CIRCUIT COURT
OF APPEALS.

This cause coming on for hearing upon the motion of the respondents for an order transferring exhibits introduced in evidence at the trial of the above entitled action, and there appearing to be good cause therefor, and the libelant consenting thereto, it is hereby

Ordered that the Clerk of this Court transfer to the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California, all of the original exhibits introduced by the parties at the trial in the above entitled action, and admitted in evidence.

Done in open court this 27th day of June, 1945.

JOHN C. BOWEN

United States District Judge.

Approved:

SAM L. LEVINSON

Proctor for Libelant

Presented by:

EDW. S. FRANKLIN

of Bogle, Bogle & Gates

[Endorsed]: Filed June 27, 1945. [24]

[Title of District Court and Cause.]

PRAECIPE FOR APOSTLES ON APPEAL

To the Clerk of the Above Named Court:

You will please prepare, certify and file with the United States Circuit Court of Appeals for the Ninth Circuit apostles on Appeal, including therein the following:

1. Libel;
2. Respondent's answer;
3. The Court's oral opinion rendered at close of case;
4. Findings of Fact and Conclusions of Law;
5. Decree;
6. Petition for Appeal filed June 2, 1945;
7. Assignments of Error filed June 2, 1945;
8. Order Allowing Appeal filed June 2, 1945;
9. Citation on Appeal with acceptance of service thereon filed June 4, 1945;
10. Oral testimony taken on the part of the libelant and all exhibits offered by libelant and admitted by the Court;
11. Oral testimony taken on the part of the

respondent and all exhibits offered by respondent and admitted by the Court;

12. A copy of this Praeceptum;

13. Order to be entered by the court for transfer of [25] original exhibits to the United States Circuit Court of Appeals for the Ninth Circuit.

J. CHARLES DENNIS

United States District Attorney

By: BOGLE, BOGLE & GATES

STANLEY B. LONG

EDW. S. FRANKLIN

(Of Counsel) proctors for respondent.

Copy received June 2, 1945.

SAM L. LEVINSON

[Endorsed]: Filed June 2, 1945. [26]

[Title of District Court and Cause.]

CITATION ON APPEAL

The President of the United States to the Above
Named Libellant, Greetings:

You Are Hereby Notified that in a certain cause in admiralty in the United States District Court for the Western District of Washington, Northern Division, wherein Walter Lubinski is libellant and the United States of America is respondent, an appeal has been allowed to the United States Circuit Court of Appeals for the Ninth Circuit on the petition of respondent.

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco in the State of California within forty (40) days from the date of this citation pursuant to an appeal allowed in the above entitled suit on the 2nd day of June, 1945, to show cause, if any there be, why the final decree in such appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable John C. Bowen, Judge of the United States District Court for the Western District of Washington this 2nd day of June, 1945.

[Seal] JOHN C. BOWEN

District Judge.

Copy received June 2, 1945.

SAM L. LEVINSON

[Endorsed]: Filed June 2, 1945. [27]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO APOSTLES
ON APPEAL

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered 1 to 27, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by Praecipe and Designation of counsel filed and shown herein, as

the same remain of record and on file in the office of the Clerk of said District Court at Seattle and that the same together with the Reporter's Transcript of Testimony, the original of which is sent up as part of this record, constitute the apostles on appeal from the Decree of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit, dated March 12, 1945.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit: [28]

Clerk's fees (Act February 11, 1925) for making record, certificate or return	
54 folios at 05c	\$ 2.70 ¹
16 folios at 15c	2.40
Appeal fee (Section 5 of Act) (\$5.00 each side)	10.00
Certificate of Clerk to Apostles on Appeal...	.50
Certificate of Clerk to Original Exhibits....	.50
Total	<hr/> \$16.10

I further certify that the costs of this record have been equally divided between the respective parties to the appeal.

I further certify that one-half of the total amount above, to-wit, \$8.05, has been paid to me by the attorney for the Appellee and Cross-Appellant. The remainder, in the sum of \$8.05, has not been

paid to me for the reason that the appeal on behalf of the Appellant and Cross-Appellee is being prosecuted on behalf of the Government.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 10th day of July, 1945.

[Seal]

MILLARD P. THOMAS,

Clerk

By TRUMAN EGGER

Chief Deputy [29]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

In Admiralty—No. 14,601

WALTER LUBINSKI,

Libelant,

vs.

ALASKA STEAMSHIP COMPANY, a corporation;
and UNITED STATES OF AMERICA,
Respondents.

PROCEEDINGS AT TRIAL

On January 9, 1945, at the hour of 10:00 o'clock, a. m., the above entitled cause came on regularly for trial in the above entitled court, and before the Honorable John C. Bowen, one of the judges of said Court;

The libelant appearing in person and by Sam L. Levinson, Esq., proctor for libelant;

The respondents appearing by Edward S. Franklin, Esq., and Stanley B. Long, Esq., (of Messrs. Bogle, Bogle & Gates), as proctors for respondents;

Whereupon the following proceedings were had and testimony taken, to-wit: [1*]

The Court: I am expecting to have a necessary interruption by long distance telephone call within about twenty minutes or so, at which time the Court will interrupt the trial. Are the parties and counsel ready to proceed with the trial of the case of Walter Lubinski against the Alaska Steamship Company and the United States of America?

Mr. Levinson: The Libelant is ready, Your Honor.

Mr. Franklin: The Respondents are ready, Your Honor.

The Court: You may proceed. Before receiving your opening statement, it is ordered that all unpublished depositions be at this time published and filed. There seems to be quite a number of them. The jackets in which they are now contained will be destroyed by the Court, in order to free the files of the material. The Libelant may now proceed.

Mr. Levinson: This is an action, Your Honor, by Walter Lubinski, as Libelant, a seaman, against the Alaska Steamship Company, a corporation, and the United States of America, as Respondents.

The action is brought under the Jones Act, and

* Page numbering appearing at foot of page of original Reporter's Transcript.

brought under the statute, the War statute, which permits an action against the Government. It is a suit in Admiralty, and the rights are confirmed to the seaman under a pre-existing law, prior to this emergency.

Briefly, the facts are as follows—

The Court: You mean your evidence will show, or the Libelant's depositions will show the facts to be as follows. [4]

Mr. Levinson: That is right. The evidence, we believe, will establish the following facts: that Walter Lubinski, the Libelant, is a merchant seaman, and employed as a boatswain, a member of the crew of the Steamship George Flavel. He signed Articles in San Francisco, and the George Flavel is owned by the United States of America, but the Alaska Steamship Company and the United States of America operated said vessel.

The Libelant signed Articles in San Francisco, and while in San Francisco the Respondents loaded certain cargo for at that time an unknown destination. The Articles were signed on the 23rd of June, 1943, a year ago last June.

The evidence will show that the principal cargo of the vessel was military cargo, and, as subsequently discovered, cargo to be used in connection with the invasion of Kiska. Most of the cargo was stowed in San Francisco. The stowage of the cargo, although it was military cargo, was the direct responsibility of the master and the officers of said vessel. That is in view of the fact that the officers

—that is, the civil officers, the officers of the vessel, are responsible for the safety of the vessel.

Among the cargo that was stowed on the vessel were certain so-called smoke bombs, that is, the small size smoke bombs. The evidence will show they came four in a case. They are contained in metal containers, approximately of a gallon size, and these smoke bombs were stowed in the forepeak of the vessel.

The George Flavel was a Liberty vessel. [5]

The evidence will further show that the mate, as I stated, and the officers, were responsible for the stowage of the cargo, and that they negligently permitted these smoke bombs to be stowed in the forepeak, when the customary and safe practice would have been to have stowed these smoke bombs in some air-tight container, or some box or magazine which has some fire fighting apparatus, or could be controlled in the event of a fire—or they should have been stowed on the deck, away from the combustible material—or some place where they could have been controlled in the event of a fire; but, nevertheless, the mate permitted the stowage of these smoke bombs in the forepeak, along with ship's stores, and stores used by the members of the crew during the course of the voyage.

During the course of the voyage from San Francisco north various members of the crew had occasion to use the boatswain's locker, or the forepeak, and were in and out of there continually; that the smoke bombs were scattered about, they were not piled safely in the forepeak; and that one

of them, in fact, was taken out of one of the boxes—some of the boxes were open; and that on the 15th of July, when the vessel was at Attu, and they were getting ready to go ashore to assist in the invasion, getting the gear ready for that purpose, the vessel, as I stated, being loaded with military cargo containing ammunition, jeeps, ordnance in the cargo hold—it was necessary to overhaul some of the ship's gear, that is, the loading gear, to assist in getting ready for this unloading on this date, on the 15th of July, about 10 [6] o'clock in the morning, when the gear was being worked and under the charge of the boatswain—the boatswain sent one man forward to obtain some tools out of the forepeak, some large wrenches—the evidence will show exactly what was required—that this man went forward into the forepeak, and while in the forepeak he had to rummage around and look around for these tools, because of the condition of the forepeak, and the box of smoke bombs was lying about there, and while there he either kicked or threw a box containing some of these smoke bombs aside, looking for his particular items of tools.

He was in there only for a few seconds; went to one of the other rooms in the forepeak to look for it, and then finally found his tools, went up on deck, and went back to the hatch and lowered the tool into the hatch where the men were working.

He had hardly gotten in the way, perhaps five minutes, when a fire was announced in the forepeak, and it was discovered that dense volumes of orange smoke was issuing from the forepeak, and

the orange smoke was identified as smoke coming from these smoke bombs.

The general fire alarm was immediately sounded, and the men were required to take their stations to fight the fire. Keeping in mind that at this time the invasion, I think, was actually taking place, some of the boats were over the side, and the vessel was loaded with ammunition, and it was noticed that this smoke was coming from the forepeak.

The station of the boatswain, the station of the Libellant in this instance, was along with the mate, at [7] the location of the fire, and it was necessary that someone go below into the forepeak to ascertain the cause of the fire, and, if possible, to put it out.

There were some hoses, I believe, at that time playing water down into the forepeak. The forepeak was not one of those rooms which was suitable for the stowage of combustible material, or pyrotechnics, as I believe the evidence will show.

He was given a gas mask, and he went down into the forepeak, into this smoke, but because of the corrosive nature of the smoke, and the actual physical conditions, he was only able to remain down there three or four minutes, trying to find the cause of the fire.

He felt his way around there, but couldn't find it, and he went back up again. Then I believe on two or three occasions he went down trying to find the cause of this fire. In the meantime, the smoke was coming forward, and they didn't know what was causing the fire, they didn't know how far it would spread.

Finally the boatswain, the Libelant in this instance, was down there with a mask, and located the source of the fire, and with the aid of two pair of heavy leather gloves, which he wore, he got hold of or reached this smoke bomb that was causing the fire, or announced the cause of it, and it was subsequently brought up by the second mate and brought on deck, and as soon as it was brought on deck the smoke and the fire stopped.

In the meantime, of course, there had been a great deal of water in the attempt to put out the fire in the [8] hold. When the boatswain came back on these one or two occasions after he went down below, it was necessary to remove the mask, because he couldn't breathe, and when it was removed, the mask, it was united with this orange smoke, it had actually permeated the mask. There was some of his clothes—it had gone clear through his shorts into his skin, and there was even some of it on his face, and he was coughing, went to the rail, attempted to get some air, but nevertheless, as soon as he felt better he put the mask on and went down again.

After the fire was put out the boatswain apparently recovered from the choking, but he began to have trouble with his eyes. His eyes were swelled up. They began to water, and he had trouble with his eyes continuously from that time forward.

He attempted to do his work, he did do his work. He assisted in the landing at Attu, and remained with his vessel, and there was a doctor aboard the vessel. He complained or reported to the doctor,

and some attempt was made at medication, but his eyes kept getting continuously worse.

Subsequently, the following month, as a part of this same operation, the vessel moved on to Kiska and participated in the Kiska invasion, and the Kiska invasion involved the unloading of much of the cargo in No. 3 hold.

While unloading the cargo in No. 3 hold, for a cause that was subsequently discovered, fire broke out in No. 3 hold. A great deal of smoke issued from the hold,—and, of course, the vessel was still loaded with [9] many explosives and war material—and at that the boatswain was not on duty—he was in his room. Immediately upon the call of “Fire,” he went to his station to assist in putting out the fire, and he was directed again to put on a mask and go below for the purpose of finding the cause of the fire in this instance.

The Court: What date was that?

Mr. Levinson: This was on August 15, approximately a month following the first fire.

The Court: August 15?

Mr. Levinson: August 15, 1943. He went below and on his way back up the ladder in No. 3 hold some of the members of the crew who were playing the fire hose into the hold, either because of their lack of attention or excitement, and without exercising a proper amount of care, played the hose directly on the Libelant as he came up the ladder. He had a gas mask on at that time, and the water knocked it off his face and he was struck in the face with the force of the water.

All of this time he was having trouble with his

eyes and the evidence will show that the additional force of the water, the removal of his gas mask by the force of the water, and the blow did not help the condition of his eyes.

He remained on the vessel until it came to Seattle, but had trouble with his eyes continuously. The vessel went from Kiska to Honolulu first, and while in Honolulu he received attention to his eyes, medical attention. Then the vessel returned to Seattle and paid off in Seattle. It paid off on the 28th of September. [10]

He remained in Seattle a day or so and then went to San Francisco and received some medication at the hospital there. He also went to see a private doctor in whom he had a great deal of confidence, in Salt Lake City, and was treated there.

Following the original injury, that is, following the original fire on July 15, 1943, his left eye began to give him a great deal of trouble. It pained him, it watered for a while, the eyelids were swollen, and he went down and it was ultimately discovered that he had entirely lost the sight of his left eye.

The Court: What date was that?

Mr. Levinson: The date of the injury was July 15, but the development of the loss of sight did not become evident until about September.

The Court: You do not know the date?

Mr. Levinson: We do not know the exact date.

The Court: I thought you spoke of some specific medical examination.

Mr. Levinson: When he had a medical examination in Honolulu sometime early in September it was found he had practically no sight in that

eye, and it was finally determined when he was examined in San Francisco during the month of September, or towards the end of September, that the sight was practically gone.

We will show by competent medical testimony that the cause of his present condition, the permanent loss of the sight of his left eye, was the result of the exposure to the gas fumes from the smoke bomb. It was a corrosive and irritating smoke. We will show that his present [11] injury is the result of some outside force, some trauma, and resulting infection in the eyeball itself. Now he has only simple light perception in the eye. He can only tell when the light is on or off. It has no value from the standpoint of being able to use it.

We will further show he has suffered a great deal of pain, although the pain at the present time is not very persistent, but the eye will probably be removed in order to avoid the danger of affecting the sight of the other eye.

We will further show that the Libelant is a young man, twenty-eight years of age, has always been in good health, has never had trouble with his eye before, and that because of the negligence of the operators of the vessel in failing to stow the cargo properly, the negligence of the man going in and kicking the box, causing the smoke bomb lid to come off and ignite, the negligence of the operators of the vessel in permitting the members of the crew to strike him in the face with the hose, that all of these were the proximate cause of the present loss of the sight of his eye, and upon such a

showing we will ask that Your Honor grant such judgment as the Libelant is entitled to.

The Court: Does the libel state more than one cause of action?

Mr. Levinson: It states only one cause of action, Your Honor, but states the various acts of negligence.

The Court: All leading to one and the same result?

Mr. Levinson: That is correct, Your Honor. I will be very pleased to read it, because it is comparatively [12] short, and perhaps that will fix it in Your Honor's mind.

The Court: I have no desire that you do so, but I will not deprive you of the opportunity if that is what you wish.

Mr. Levinson: Well, it is very short, and I will read Paragraph III.

(Counsel reads Paragraph III of Libel.)

Then we have the allegation as to the damages, Your Honor, that we have filed a claim within the regulations provided, and more than 50 days have elapsed and the same has been disallowed.

The Court: The Respondents may make their opening statement at this time, or later, as they elect.

Mr. Franklin: The evidence in this case will disclose, if the Court please, that on or about June 23, 1943, the Steamship George Flavel was assigned by the Government to the exclusive supervision and control of the United States Army, to be used as a component of the flotilla involved in

the Attu and Kiska invasions; that in pursuance of that supervision and control executed by the Army that the Army placed aboard the Flavel certain transport officers, who were during all times involved in the voyage in exclusive control of the loading and discharging of the cargo.

The evidence will further show that as befits war times men and supplies were crowded aboard the vessel, that there were approximately twelve hundred soldiers, besides ammunition, jeeps and military equipment, in addition to the armed guard which is a permanent part of [13] the ship's personnel and accompanies it to repel aircraft.

The Court: We will take a recess at this time for five minutes.

(Recess.)

The Court: You may resume your statement.

Mr. Franklin: If the Court please, the complement aboard the Flavel as she left for the Alaska invasion included twelve hundred soldiers, what is known as an amphibious crew, comprising approximately nineteen or twenty members, with their equipment, which consisted of eight landing barges, and as Your Honor knows, their function in the case of a landing is to carry the troops and the supplies to the shore after the landing is effectuated.

As part of their equipment and for use in the landing craft there was a number of smoke distress signals aboard the vessel. These smoke distress signals are commonly used in military enterprises, normally at sea, and their purpose is that in the event a boat is forced at night to be out on the

water, a life boat, or any similar situation, they discharge this distress signal by pulling or removing a cap, and as the gas in the signal is lighter than air it rises, and as it rises it illuminates the air, in this case with an orange color which is visible and perceptible for miles around, and leads to the ultimate rescue of the boats at sea.

The record will show that these distress signals were carefully enclosed in cartons of four apiece, and comprised a tin or receptacle which can be referred to as like a gallon tin, and sealed or secured with a cap [14] which screwed and fitted in tightly into the top of the container, and which had to be removed to permit the escape of the contents of the smoke distress signal.

The evidence will further show that because of the congested conditions prevailing aboard the vessel it was not possible to stow this equipment of bombs, plus other paraphernalia to be used by the landing crew, anywhere other than on the forward portion of the deck. And in addition to the smoke bombs there was foodstuffs which would be put in the landing craft, and the mate, a Mr. Kristiensen, seeing that this equipment of the landing crew was exposed to the wet and the dampness prevailing on the trip to Attu, upon the request of the Ensign, gave permission to store this equipment in the forepeak, which was the only and best place available for this ammunition and war accoutrement.

The evidence will further show that this equipment was stored in the forepeak, which, as Your Honor recalls, is a compartment just below the ex-

treme forward portion or stem of the vessel, and that this forepeak is commonly used for the location of certain gear carried by the ship; that the entry into this forepeak is gained ordinarily, or is available to, besides the ship's officers, only to the boatswain, who in this case is the Libellant, Mr. Lubinski.

The evidence will further show that he was in charge of the stowage of this equipment. The evidence will further show that he frequently visited the forepeak in the course of his particular duties, and on the day in question had been there at numerous times. [15]

The evidence will further show that the ship's officers granted permission to the members of the landing craft to work on their guns and equipment in the forepeak, and that they so used the forepeak during the period of time the vessel was en route to Attu, and up until the Attu incident of July 15, 1943.

The evidence will further show, as recounted by Mr. Levinson, that about 10 o'clock on the evening of July 15, 1943, orange smoke, obviously from a discharged or leaky smoke bomb, was discovered billowing out of the forepeak, and that a crew of four went up from the vessel, and in response to the signal various members of the ship's crew and officers attended the forepeak.

The evidence will show, Your Honor, that not only Mr. Lubinski but various of the ship's officers went down below to investigate the cause and the location of the smoke bomb, that on going below

Mr. Lubinski was furnished with an Army gas mask, which was sound and safe and satisfactory in all particulars; that Mr. Lubinski was down there on two or three occasions, and that the smoke bomb was discovered and brought out on the deck in a discharged condition; that when the smoke bomb was brought to the deck the discharged smoke bomb, it was not in a container, that the cap had been removed, and the cap was never located or discovered.

The evidence will further show that someone had apparently broken into one of the cases containing four smoke bombs, because one bomb was missing from the lot.

The evidence will further show that the Libelant made no complaint of any trouble with his eye on July [16] 15, 1943, or thereafter, either to the mate or to the doctor aboard the vessel, a medical officer who was carried as a transport surgeon aboard the vessel.

The evidence will further show that the vessel continued on to Kiska and anchored off the beach-head on the morning of the invasion, August 15, 1943; that the landing craft left the vessel carrying the soldiers ashore, and were shuttled back and forth to get needed cargo from the hold; that the holds were being discharged at that time under the exclusive jurisdiction and supervision of the officers of the United States Army; that in the process of discharging, a soldier apparently attempted to start a "snow jeep" in No. 3 hatch, and the

“snow jeep” backfired, and as a result of that backfire a fire occurred down in No. 3 hold.

The evidence will show that the various ship’s officers, put the fire out, and after the fire was out an investigation was made and it was discovered that the jeep was on fire and was the cause of the fire.

The evidence will show that not only the ship’s officers but Mr. Lubinski had masks on, and wore the masks during all of the period, except for the period of time that Mr. Lubinski claims that the mask which he was wearing was knocked off while he was down below in the hatch, by certain individuals of the crew standing up on the top of the hatch, and who through the dense smoke pervading the hatch were playing the hose down below.

The evidence will show that the exposure in period of time on this Kiska incident, when Mr. Lubinski claims that the mask was knocked off, was not over twenty [17] seconds.

We think, if the Court please, that with those facts before it the Court must find that this is a case which is compensable only under the Second Seaman’s War Risk Insurance, and that for the loss of sight claimed by Mr. Lubinski, if it resulted from those two incidents, it is the result of a war risk, or war-like exposure, and by reason thereof Mr. Lubinski’s rights are governed exclusively by the Second Seaman’s War Risk.

Mr. Levinson: Your Honor, I would like to interrupt Mr. Franklin. No allegation of such a nature is made in the answer, and it is entirely a

new defense, that is, of the war risk. The answer is general denial and contributory negligence, and I do not think it is proper to go into that.

Mr. Franklin: I do not think I am required that, Your Honor. I am merely stating what our position is.

The Court: You may proceed. You have knowledge of Counsel's objection now, and you may proceed, and you may expect that I will assume that objection may be made to testimony along this line.

Mr. Franklin: Yes, Your Honor. We will further show, if the Court please, that the unfortunate condition from which the Libellant is suffering is known in medicine as iridocyclitis or uveitis. Those words, in medicine, mean an infection or inflammation of the inner portions or inner chamber of the eye, affecting the iris and adjacent organs, and that this condition can only medically result, with reference to injury, by a penetrating injury which penetrates into the inner mechanism of the eye, and [18] affect the iris, and that the only other cause, and the usual cause for this condition is some bodily systematic condition, such as the teeth, infections of the teeth, tonsils, syphilis, gonorrhea, tuberculosis, sinus trouble, or any infectious condition in the body, and that it would be medically impossible by exposure to smoke or any chemical to affect—to either cause or aggravate this condition.

When we have presented evidence along those lines, Your Honor, we feel that Your Honor will properly dismiss this action with prejudice.

Mr. Levinson, I presume that we can stipulate at this time that the Alaska Steamship Company, the general agent, may be dismissed?

Mr. Levinson: Not in this case, because the proof will show otherwise.

Mr. Franklin: Very well. The Respondents move at this time that all witnesses, other than medical witnesses, be excluded from the courtroom.

Mr. Levinson: The only witnesses I have are not witnesses as to any of the events which occurred on the vessel. I have some witnesses here to testify as to custom, to testify as to safe ship practices, and I believe that under the rules the Court has discretion in the matter. If Your Honor insists upon it, we will do it.

The Court: It is not the Court insisting upon it. It is the duty of the Court to pass on the motion.

Mr. Levinson: None of these witnesses will testify to any facts that occurred on the ship. I will so state to Counsel now. If he stills wants to make this motion, [19] in the light of those facts, it is up to Counsel.

Mr. Franklin: I think they should be excluded, if the Court please.

The Court: I think ordinarily, gentlemen, that upon a motion to exclude witnesses the motion is usually granted, with the exception of those whose aid in the conduct of the trial is needed and is proper to be had. Was there an exception to it?

Mr. Franklin: Medical witnesses, Your Honor.

The Court: With the exception of medical witnesses, and I suppose that means the doctors. Is that what you mean by that?

Mr. Franklin: Yes, Your Honor.

The Court: The other witnesses will now be excluded from the courtroom, and the witnesses will retire and remain in the witness room or in the corridors until you are called to the courtroom. The Libelant may call his first witness.

(Witnesses excluded.)

Mr. Levinson: I will ask Mr. Lubinski to take the stand.

WALTER LUBINSKI

called as a witness on behalf of Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levinson:

Q. Will you state your name, please? [20]

A. Walter C. Lubinski.

Q. How old are you, Mr. Lubinski?

A. Twenty-eight.

Q. What has been your occupation?

A. I have been a seaman all my life.

Q. How many years have you actually followed the sea? A. Since 1935.

Q. In the last few years what has been the nature of your service on a ship; what jobs do you usually hold?

A. The last three or four years I have been sailing as boatswain.

Q. In what department of the ship?

A. The deck.

(Testimony of Walter Lubinski.)

Q. Mr. Lubinski, were you a member of the crew of the Steamship George Flavel, which signed on in San Francisco in June, 1943?

A. I was, sir.

Q. Where did you join that vessel?

A. San Francisco.

Q. At the time you joined the vessel, by whom were you employed, and what is your recollection of the person who employed you?

A. I was employed by the Alaska Steamship Company.

Mr. Franklin: If the Court please, we move that answer be stricken upon the ground that it is the conclusion of the witness.

The Court: The objection is overruled and the motion denied.

Q. (By Mr. Levinson): At that time was there any statement made to you that any other person was your employer? [21]

A. No, sir.

Q. Mr. Lubinski, after you joined that vessel were you present at the loading of the cargo on that vessel?

A. Yes, sir; I was present.

Q. You joined it, as I understand, in the capacity of boatswain?

A. Boatswain; that is right.

Q. Where was the vessel when you joined it?

A. She was in San Francisco, Pier 48.

Q. How long did you remain in San Francisco?

A. Excuse me, sir—Pier 45.

Q. How long did you remain in San Francisco during the process of loading?

(Testimony of Walter Lubinski.)

A. I think about seven days.

Q. Do you recall whether the loading took place at that particular dock?

A. Yes, sir. We loaded all at one dock.

Q. Were you present during the loading of the cargo?

A. I was present during my regular working hours when we were loading.

Q. What were your regular working hours?

A. On 8 to 5.

Q. When you are ashore you stand shore watches? A. Regular day work.

Q. What was the general nature of the cargo which was being loaded at that time?

A. They were loading coal and wood, gasoline, ammunition, jeeps, a few trucks and foodstuffs.

Q. Was there also some military ordnance, as you call it? A. Yes, sir. [22]

Q. The George Flavel is what type of ship?

A. Liberty.

Q. How many hatches has she? A. Five.

Q. How many forward of the house?

A. She has three.

Q. How many aft? A. Two.

Q. It has a forepeak? A. Yes, sir.

Q. At the time of the loading of said vessel who was in charge of the loading of the vessel that you were able to observe?

A. I was able to observe the chief mate and the mates on watch.

Q. Was the captain about, the skipper?

(Testimony of Walter Lubinski.)

A. I seen the captain just before we sailed. The day before we sailed he was making an inspection of the ship, to see how the cargo was stowed on the deck. We had a couple of barges on deck.

Mr. Franklin: That is not responsive, if the Court please.

The Court: Just answer the question each time. Have in mind the specific question and answer that. The answer may be stricken.

Q. (By Mr. Levinson): I first asked if the captain was about. You can answer that yes or no. Was the captain about? A. Yes, sir.

Q. State the occasion when you saw the captain, or when you, [23] yourself, participated with the captain in connection with the investigation or inspection of any loading?

A. A few hours before we sailed I had the gang working at No. 2, securing a Jumbo, and the captain was making an inspection to see how everything was secured, and we had a little chat on deck, and he went on about his business making his inspection.

Q. Was there any Army officers or personnel, as far as you could see, that exercised some supervision in connection with the loading?

A. No, sir. They have a civilian supercargo.

Q. Were there some Army officers in charge?

A. There was lots of Army officers about. I don't know whether they were in charge. I know the cargo was under the supervision of the civilian cargo superintendent.

(Testimony of Walter Lubinski.)

Q. What was the mate's duty, as far as you were able to see, in connection with advising and conferring with the civilian supercargo?

A. His regular duties. He is the chief mate; he is in charge of the loading. He cooperates. The cargo supercargo cooperates with him.

Q. Are you able to state, either of your own knowledge or from what you observed, whether the Army officers aboard had any experience in connection with loading vessels? First, the answer to that would be yes or no—can you state?

A. Yes.

Q. What was your observation, and how did you reach that conclusion?

A. The Army officers that were on board were supposed to [24] have been the loading officers. From my observation, which took about five minutes, they had never seen a ship before.

Q. Can you state whether or not there was any reliance put on the ship's officers by those men?

Mr. Franklin: If the Court please, that is objectionable.

The Court: Objection sustained. You can ask what they did.

Mr. Levinson: Very well, Your Honor.

Q. (By Mr. Levinson): What did they do in connection with the stowage and in connection with any conference or participation with the mate?

A. Well, they introduced themselves to the mate, and the mate introduced me to them, and we cooperated with them as much as we could, because

(Testimony of Walter Lubinski.)

we knew they had never seen a ship before, and never knew the way of stowage of cargo or anything like that. We cooperated with them one hundred per cent, me and my men.

Q. You are familiar with the forepeak?

A. Yes, sir; I am.

Q. What is normally and usually kept in the forepeak?

A. What is usually kept in the forepeak is all the deck equipment, Manila lines and wires and shackles and blocks, and different deck gear.

Q. How about the carpenter shop?

A. Just the carpenter's equipment, tools.

Q. How long have you been going to sea?

A. Since 1935.

Q. What has been the practice in connection with keeping [25] similar items in the forepeak on other American merchant vessels?

A. I do not understand you.

Q. I will restate it. What are the usual and customary items that are kept in the forepeak of American merchant vessels?

A. Well, you have Manila lines, you have all your deck equipment, shackles, blocks, cluster lights, shovels.

Q. What does good seamanship require in connection with the stowage of any combustible or pyrotechnic material in the forepeak?

A. According to good seamanship, it should be placed in an air-tight locker or some place on deck

(Testimony of Walter Lubinski.)

where air cannot get into it—or a metal container, a sealed container.

Q. Do you know of any Coast Guard regulations in connection with such stowage?

A. Yes, sir; I do.

Mr. Franklin: That is objected to as not the best evidence.

The Court: Read the question, please. (Last question and answer read.) The objection is overruled.

Q. (By Mr. Levinson): When the vessel sailed or at a time ahead of when she sailed, how was she loaded with reference—strike that. Did you see any smoke bombs in the cargo of that vessel?

A. No, sir; I did not.

Q. Do you know what a smoke bomb is?

A. Yes, sir.

Q. That is commonly known as pyrotechnical material?

A. That is right. [26]

Q. What is the customary and usual procedure with reference to the stowage of smoke bombs of that nature?

A. It should be the proper procedure, and the regulations even in war time, laid down by the United States Coast Guard—

Mr. Franklin: No; we object to that.

Q. (By Mr. Levinson): Do not tell us what the regulation is. Just state what is the proper procedure.

A. The proper procedure is for it to be stowed.

(Testimony of Walter Lubinski.)

somewhere where there is a steam smothering system, or sprinkler system.

Q. Are there such provisions and systems on a Liberty ship? A. Yes, sir.

Q. What provisions are there in the hold in connection with any steam smothering system or fire prevention system?

A. They have steam smothering systems.

Q. Have you a steam smothering system or fire prevention system in the forepeak?

A. No, sir.

Q. And did you have it on that particular vessel?

A. No, sir.

Q. What is the customary provision in connection with the stowage of any smoke bombs which are to be used in the boats? Where are they usually stowed?

Mr. Franklin: Do you mean during peace time or during war time?

Mr. Levinson: During all times now.

Q. (By Mr. Levinson): Where are they stowed?

A. Like I told you, they stow them in a locker some place where it is air-tight, or a metal container. [27]

The Court: In a locker?

The Witness: Yes, sir.

The Court: Are lockers provided for them in a Liberty ship?

The Witness: Yes, sir. They have various lockers on deck.

(Testimony of Walter Lubinski.)

Q. (By Mr. Levinson): Are there any lockers about the mast, on the mast table?

A. Yes, sir.

Q. Are there any lockers in connection with the——

Mr. Franklin (Interposing): Do not lead the witness.

Q. (By Mr. Levinson): Are there any lockers about the house, on deck?

A. Well, I cannot answer that yes or no. It pertains to various Liberty ships.

Q. Liberty ships of the type of the George Flavel, they are all one type, aren't they?

A. Yes, they are all one type, but they have additions built to them, after they are built. After they make a voyage or two they build additions to them at various times.

Q. Do you recall any on the George Flavel on the deck near the forepeak or the house?

A. I think there was one just right between the break of the house and what they call the doghouse, that they have built on there in addition to carry additional men, twenty-five men. What they call doghouses.

Q. Where is that?

A. On the boat deck. [28]

Q. Do you recall when you arrived at Attu?

A. I think it was about July 15, 1943.

Q. What were you doing on the day of this fire, or just prior to this fire in the forepeak?

A. We were working a pretty long shift, all

(Testimony of Walter Lubinski.)

right. We were on deck about twenty hours and working down in No. 2 hold.

Q. That is one of the holds in the forward part of the ship?

A. One of the holds in the forward part of the ship.

Q. What were you doing in No. 2 hold?

A. We were working on a Jumbo, because the purchase had an awful lot of twists in it, and we were lifting some heavy "cats," some of them weighing from seven to ten tons. The Jumbo kept twisting as we kept bringing them aboard, and if that keeps on the wire will crystalize and somebody will get killed. We had to lay the diamond block into the hold, and we had to take the shackle pins out to get the turns out, and we didn't have enough tools, and I sent one of them men forward to get some tools.

Q. Do you recall who you sent forward?

A. I do not.

Q. You subsequently learned who it was?

A. I did afterwards. I just learned the last couple of days.

Q. What happened when he came back?

A. This particular man that I sent for the tools, this seaman, he lowered the tools in the hold, and about the time the tools were lowered somebody started to shout "Fire," and the alarm started going.

Q. The general alarm? [29]

A. The general alarm.

(Testimony of Walter Lubinski.)

Q. Were you in convoy of other ships at that time?

A. No; we were in Attu, already.

Q. Then what happened after the alarm of fire?

A. I came up the ladder with the rest of the men, and all we had to look at was to look forward and you could see that everything was—there was much orange smoke coming out.

Q. Where was the smoke coming from?

A. Coming through the ventilators and the square of the forepeak hatch.

Q. How do you get into the forepeak hatch?

A. It is about a three foot square, and has a ladder that goes straight down.

Q. How far is it from the exit to the point—

A. (Interposing): I would say three feet or four feet at the most.

Q. What happened when you got up on deck?

A. Naturally, I ordered the men right away to rig up hoses, which was done immediately, and some of the men went down back aft—or midships, rather—and got some masks, and I was the first man that went down there. None of us knew what it was; we had never seen it before because it was something new.

Q. It was your organization of the ship, prior to the time you were involved in the emergency—the creation of a so-called emergency squad?

A. Yes, sir.

Q. Was there such an emergency squad on this particular vessel? [30]

A. Yes, sir.

(Testimony of Walter Lubinski.)

Q. What position did you hold, or what job did you have on that emergency squad?

A. I was second in command to the chief officer.

Q. Who was the officer in command?

A. The chief officer.

Q. Was he chief officer at the time?

A. We were there first, and he came a few seconds after we did.

Q. What is your station in the event of an emergency alarm?

A. I am to take charge, direct the men to fight it with whatever means we have. That was until the chief officer arrived at the scene of the fire.

Q. Are any orders required with reference to you going blow or doing what you can to put it out?

A. No.

Q. You are second in command?

A. That is right. I am to use my own discretion.

Q. When you got up there how did it look, when you first got there?

A. There was lots of it pouring out. It was all orange color.

Q. Did you know at that time what the trouble was?

A. No, sir. None of us knew.

The Court: Did anyone direct you specifically, pick you out and tell you to go forward and make the investigation?

The Witness: No, sir.

The Court: You just thought that somebody ought to do it? [31]

The Witness: Nobody has to, sir. I am second

(Testimony of Walter Lubinski.)

in command of the emergency squad, as deck boss, and that is my job.

The Court: You thought of your own volition that it was up to somebody to go, and, therefore, you chose to go yourself?

The Witness: Well, if I didn't choose to go myself——

The Court: Just answer the question.

The Witness: Yes, sir.

Q. (By Mr. Levinson): If you had not gone, what would have been the result?

Mr. Franklin: That is objectionable, Your Honor.

The Court: Objection overruled.

Q. (By Mr. Levinson): If you had not gone?

A. I don't know. Of course, everybody would have run around like a bunch of wild Indians.

Q. With reference to your duties, did going forward and going below have anything to do with your duties? A. Yes, sir.

Q. Is that part of your regular duties?

Mr. Franklin: That question is objected to as leading.

The Witness: Yes, sir.

The Court: Objection overruled.

Q. (By Mr. Levinson): After you got there, go ahead and tell the Court what you did.

A. Well, about that time we got up there the men got two hoses rigged all ready, and they were pouring them into the forepeak; and the chief officer arrived there then.

(Testimony of Walter Lubinski.)

Q. What were they pouring into the forepeak?

A. Water.

Q. Then go ahead and tell what you did.

A. One of the men—I don't know who it was—about that time arrived with two or three gas masks, and I put one on, and I was the first man that went down. I was down there about four or five minutes and I came back up.

Q. How far down did you go?

A. I went to the first deck of the forepeak.

Q. What did you do?

A. I couldn't see anything—just feeling my way around, trying to find the source. The magazine is right aft of the carpenter shop, and that is what we are always scared of.

Q. What is immediately aft of the forepeak?

A. The magazine.

Q. What is in the magazine?

A. Ammunition.

Q. Then what is the danger of any fire or great amount of heat in the forepeak?

A. A great amount of heat that will hit that bulk-head will blow up the whole ship.

Q. You knew that when you went below?

A. Yes, sir.

Q. How long were you down the first time?

A. Just four or five minutes, I would say.

Q. Did anybody else go down with you the first time?

A. The first time no one went with me.

Q. What caused you to come up?

A. It was getting pretty bad down there.

(Testimony of Walter Lubinski.)

Q. What do you mean by "pretty bad?" [33]

A. Well, those respirator masks are probably all right out in the air, it is regulation Army to repel any kind of a gas; but in an enclosed place like that they are not the proper equipment.

The Court: I call the attention of Counsel to the fact that the witness is inclined more often to give his explanatory statements than he is to answer the questions. Try to hold his attention to the form of the question.

Mr. Levinson: Will you give me a moment, please, Your Honor?

The Court: Yes.

Mr. Levinson: I ask that the answer be read.

The Court: The answer may be read.

(Answer of witness read.)

Mr. Franklin: I move that the answer be stricken.

The Court: It is stricken, and the Court will disregard it.

Q. (By Mr. Levinson): What was your physical condition during the time you remained down, at the end of the time you were there the first time? What happened to you?

A. It got stuffy.

Q. With reference to your breath; could you breathe?

A. I was breathing, but it was getting pretty hard. That is the reason I came up.

Q. When you got up, how long did you stay up?

(Testimony of Walter Lubinski.)

A. Oh, a couple of minutes. I stood over near the rail.

Q. What did you do?

A. I took off my mask and went over to the rail to get some air. I went down again the second time with the second mate. [34]

Q. What did you find, if anything, the second time? A. We didn't find anything.

Q. Did you go down at a later time again?

A. Yes, sir.

Q. How many times did you go down?

A. Oh, I don't know; five or six, or maybe three or four. I don't remember exactly.

Q. During all of this time what was the condition of the forepeak and the port deck at the entrance to the forepeak, with relation to any smoke.

A. She was still plenty thick down there.

Q. And you could not see?

A. We had flashlights with us, but they didn't do very much good. We felt our way around.

Q. What kind of smoke was it?

A. Orange colored smoke.

Q. Did you ultimately find the source of this smoke?

A. Yes. The second mate or somebody—I just don't remember exactly who found it.

Q. Did you locate it yourself?

A. No, sir. Somebody else found it down there.

Q. Were you on deck when the canister, or whatever emptied the smoke, was brought up?

A. Yes, sir; I was on deck, but I don't remem-

(Testimony of Walter Lubinski.)

ber who brought it up.

Q. Did you observe the cannister?

A. Yes, sir.

Q. What was it?

A. It was a gallon can type, or container. It was very charred, burned. [35]

Q. Up to the time it was brought on deck did you know the cause of the fire below?

A. No, sir. Nobody knew.

Mr. Franklin: We move that the answer be stricken upon the ground that it is the conclusion of the witness. He can only answer for himself.

The Court: I will overrule that objection. The Court will consider it under all the circumstances.

Q. (By Mr. Levinson): Mr. Lubinski, had you seen the smoke bombs or distress signals on the vessel before, or similar ones on other vessels?

A. No, sir.

Q. Do you know what they contain, the chemical substance?

A. No; I do not.

Q. You can answer that yes or no.

A. No, sir; I do not.

Q. You are not a chemist?

A. No, sir.

Q. Had you or any of the men ever received any instructions in relation to your association with these smoke bombs, or did any appear on the bombs that you saw, or other bombs that you have seen, if you have seen them?

A. They appeared on these, yes.

Q. What was the nature of the instruction? What did it say on them?

(Testimony of Walter Lubinski.)

A. It tells you it is a distress type of signal, and to be thrown over to the lee of you.

Q. To the what? A. To the leeward.

Q. What does that mean? [36]

A. It means don't throw it into the wind; throw it away from the wind so that it blows past you instead of towards you.

Q. After this fire was put out—how long did it take, altogether to put out this fire?

A. I guess half an hour; somewhere around there.

Q. Do you remember what you had on at the time you went down to the fire, what clothes you were wearing?

A. I had a pair of heavy underwear on, and I had Frisco jeans.

Q. What is that?

A. That is heavy dungarees, black dungarees, and a heavy white wool short, top short, and a parka over the top.

Q. Was your parka on over your heavy clothing?

A. It had no head piece. The head piece was off—just the cut-apart.

Q. Was that what you were wearing when you went below? A. Yes, sir.

Q. Do you remember the condition of the weather up there in July?

A. It happened to be odd. She was pretty cold that day.

Q. Although it was July?

(Testimony of Walter Lubinski.)

A. Although it was July; yes, sir.

Q. When you came up, and when the fire was put out, what was the condition of your clothes in connection with any residue or any material?

A. Well, it looked like I had an orange colored suit on.

Q. Did any of it permeate your body, or did you notice it on your body?

A. I noticed it on the bare parts of my face and neck. [37]

Q. How did it feel to your eyes?

A. It burned, burned very badly.

Q. Do you remember, or can you tell us whether or not any of the smoke permeated your clothes?

A. It went through the parka, under the heavy woven wool short, the top short I had.

Q. Was the parka buttoned and closed up?

A. It was one of those that goes over your head, with a detachable head piece.

Q. It doesn't button in front at all?

A. No.

Q. You say there was something underneath the parka, on your shorts? A. Yes, sir.

Q. Did you have a cap on, do you remember?

A. I took the cap off to put the mask on.

Q. By the way, during the course of this fire was any order given in connection with the boat, or was that at a later date?

A. That was at a later date.

Q. Will you tell the Court what developed in

(Testimony of Walter Lubinski.)

connection with your physical condition, your eye, and how you felt following this fire?

A. Well, following that I went down to the Army doctors and they washed my eyes out with boric acid, so then we had some longshoremen aboard, and the mate told me that he told the gang to go below, because we had a pretty long——

Mr. Franklin (Interposing): Just a minute, if the Court please; I object to that.

Mr. Levinson: I do not think it is material. [38]

The Court: Do not say what the mate said.

Q. (By Mr. Levinson): Go ahead, tell how you felt.

A. I went down below and washed my eyes out, and then I knocked the gang off and went below.

Q. When did you turn to again, if you remember?

A. We turned to again at 1 o'clock in the morning, but before that I was pretty sick.

Q. You say you were pretty sick; how did you feel, and why and where?

A. Well, about five or six hours later both of my lids were pretty badly swollen.

Q. How long did that condition continue?

A. That continued for a couple or three days, and then the swelling disappeared.

Mr. Franklin: What disappeared?

The Witness: The swelling.

Q. (By Mr. Levinson): How did your eyes feel during that period?

A. My left eye was starting to bother me.

(Testimony of Walter Lubinski.)

Q. Bother you in what way?

A. It was aching, and getting pretty sore.

Q. It was sore?

A. Yes; the same as a toothache, I guess you would call it.

Q. Like a toothache? A. Yes, sir.

Q. How long did that ache continue after that?

A. It just kept growing worse all the time.

Q. Did the doctor aboard the ship give you anything for it, or give you any treatment for it?

A. He did the best he could, twice a day.

Q. What would he do? [39]

A. He would wash my eye out and put some salve on it. That is all he could do.

Q. How did your eye feel during the period between July 15, 1943, the day of this fire, and the occurrence of the second fire, when the ship was at Kiska—that would be on August 15?

A. It was growing steadily worse and was badly inflamed.

Q. Did your vessel participate in the invasion of Kiska? A. Yes, sir.

Q. Were you in convoy at that time?

A. Yes, sir.

Q. There was an incident of a fire that occurred while the vessel was in Kiska? A. Yes, sir.

Q. What time of day was that?

A. I guess it was around between ten and twelve in the morning, somewhere around there.

Q. Where were you when the alarm of fire was first called out? A. I was in my room.

(Testimony of Walter Lubinski.)

Q. What is your station upon such an alarm?

A. Emergency squad, second in command.

Q. What did you do when the alarm of fire came?

A. When I heard the alarm given I waited for the full ring. You have a set amount of ring for fire and different attacks, and when I realized it was fire—the bell was right outside of my room, and I was standing there waiting for the set amount of rings, and everybody was all hollering “Fire forward,” and I went forward, and here was tons of smoke coming out of No. 3 hatch. [40]

Q. What did you do when you got to No. 3 hatch?

A. Four or five of us—the second mate and myself, and the third mate, and two or three soldiers and sailors went down below again.

Q. Could you see down into the hatch at that particular time?

A. At different intervals, when the draft blew in and out.

Q. Do you know what was in the hatch at that time?

A. Coal, wood, personal belongings, and “snow jeeps.”

Q. Did you go down into the hold?

A. Yes, sir.

Q. What was your purpose in going down into the hold?

A. We wanted to discover the source of the

(Testimony of Walter Lubinski.)
fire, because we didn't know what started it. None of us knew.

The Court: At this point we will take a ten minute recess.

(Recess)

The Court: You may proceed.

Mr. Levinson: Your Honor, in view of the fact that I have one witness who will not be here at 2 o'clock, would Your Honor permit me to withdraw this witness?

The Court: Yes; you may do that.

(Witness Temporarily Excused)

NICHOLAS M. GLADIS

called as a witness on behalf of Libelant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Levinson: [41]

Q. Will you state your full name, please?

A. Nicholas M. Gladis.

Q. Mr. Gladis, what is your occupation?

A. I am a merchant seaman, sir.

Q. How long have you been a merchant seaman?

A. Twenty-three years.

Q. Are you presently active in that occupation?

A. Yes, sir.

Q. Have you sailed on Liberty vessels?

A. I have, sir.

(Testimony of Nicholas M. Gladis.)

Q. Have you sailed on Liberty vessel carrying an Army cargo, such as ordnance and explosives?

A. Yes, sir.

Q. In your experience as a merchant seaman, what is the customary practice in connection with the stowage of any kind of explosive or pyrotechnical material in the forepeak?

Mr. Franklin: If the Court please, there is no evidence of any explosive material in this bomb; and, secondly, the question is objectionable because it is not related to the facts of this case, to a military vessel under the exclusive jurisdiction of the United States Army, participating in an invasion.

The Court: The objection is overruled.

Mr. Levinson: Will you read the question?

(Last question read)

Q. (By Mr. Levinson): Can that be done?

A. No, sir.

Q. Will you state why not?

A. I will tell the reason why; in going up North there is [42] an awful lot of dampness that you have in them forepeak, and you haven't got the facilities of securing any of them cans up there, in any way or form. There is only one set of shelves that you have on the port side, and that is where all your slings and other rope in working your cargo is kept.

Q. With relation to a set of shelves, what type of ship are you referring to?

(Testimony of Nicholas M. Gladis.)

A. The Liberty ship, sir.

Q. Are there any provisions on a Liberty ship for the stowage of this type of material?

A. There is, sir.

Q. Where is such provision?

A. When I was on the Henry Falen——

Q. Do not give a specific instance unless required to, but tell generally what is the condition.

A. When I was on this Liberty ship they had provisions on the forward part of No. 4 hatch, when I first came aboard that ship, and when I looked in there and I seen all these cans of various chemicals, I asked the mate——

Q. (Interposing): You cannot tell what you asked the mate. Describe the place where they were stored.

A. It was on the forward part of No. 4 hatch. They had a locker there especially built for carrying these chemicals.

The Court: Mr. Levinson, try to insist that the witness answer the question you ask, and not some other question.

Mr. Levinson: I understand that, but we sometimes [43] witnesses, Your Honor——

The Court: That is true, but stop him.

The Witness: I am sorry, but I have never been in these places before.

Q. (By Mr. Levinson): Mr. Gladis, what provisions are there on Liberty ships with reference to any space in the mast table, underneath the mast table? Are there any lockers there?

(Testimony of Nicholas M. Gladis.)

A. No, sir. I do not think you could keep anything underneath them shelves there in them Liberty ships. If you did keep something there it might be a bucket, or something like that—with the way the ship sheers down, see. You haven't got the space there.

Q. Were you talking about the forepeak or the deck? A. The forepeak, sir.

Q. I asked you about the deck. What provisions are there on the deck, by the mast table?

A. In the mast houses you have one on the starboard side, forward of No. 2 winches, and then you have two lockers in the mast house, at the forward part of No. 3 hatch.

Q. Are they on deck?

A. They are on deck, sir.

Q. Are they suitable for the stowage of this kind of material? A. Yes, sir; they are.

Q. What is the custom, or what are the requirements, if you know, of any requirements in connection with the stowage of such material in any place where there are no fire fighting, automatic fire fighting facilities?

Mr. Franklin: If Your Honor please, obviously that [44] is not the best evidence. The best evidence would be the requirements themselves, and not the opinion of this witness as to what they are.

The Court: Read the question, please. (Last question read.) Objection sustained. It is not clear.

Q. (By Mr. Levinson): What is the custom

(Testimony of Nicholas M. Gladis.)

and the practice in connection with the stowage of such materials in places where there are no automatic fire fighting facilities?

A. I would take it, from what I have seen aboard ships, in water-tight lockers with no ventilation in there, that would be dogged down in the event that anything happened, so they would be air-tight, and no ventilation would be able to bring up any fire.

I have had experience in carrying on these troop ships 5-gallon cans of gasoline, with all the troops being on deck to see about the hazardous smoking, and the way they are throwing their cigarettes—

Mr. Franklin: (Interposing) If the Court please, I move that the entire answer of the witness be stricken as not responsive.

The Court: Personally, I think none of it is responsive. There may be some parts that are. If there are any such, you can ask him again, ask him some question, and have him give consideration to the question. The whole thing is stricken. Ask him another question, or you can ask him the same one.

Mr. Levinson: Mr. Reporter, will you read the question again?

(Last question read)

Q. (By Mr. Levinson): Just tell the general custom, and do [45] not give any specific instances.

A. I have always put them in a mast house locker on deck.

(Testimony of Nicholas M. Gladis.)

Q. Is that the general custom?

A. That is the general custom with me, sir.

Q. Is that the general custom on Liberty ships?

A. Yes, sir.

Q. Mr. Gladis, is the forepeak of a Liberty ship of the type of the George Flavel, is the forepeak of such a nature that it permits the stowage of combustible material such as pyrotechnic bombs?

Mr. Franklin: That is objected to, if the Court please. There is no evidence that this is a combustible material.

The Court: The objection is overruled.

Q. (By Mr. Levinson): Did you get the question, Mr. Gladis? A. Yes, sir.

Q. Is the forepeak such a place where you could stow it? A. No, sir.

Q. Mr. Gladis, in your experience, who is responsible for the safety of the ship with relation to the stowage of the cargo?

A. The chief mate, sir.

Q. The fact that you are carrying war cargo, does that affect the responsibility?

Mr. Franklin: Your Honor, that is obviously objectionable.

The Court: The objection is sustained. Ask him what the practice is.

Q. (By Mr. Levinson): Does the practice of carrying war cargo affect such responsibilities? [46]

A. Upon the mate; yes, sir.

Q. Whose responsibility is it when you carry war cargo? A. The chief mate's, sir.

(Testimony of Nicholas M. Gladis.)

Q. Does that same responsibility exist at the present time, under present war conditions?

A. I could not tell that definitely, sir, because with these security officers that we have for the Army, they might have their finger in it, for all I know.

Mr. Long: Just a minute; that is precisely what I anticipated the witness would say, and I move that all his previous answers be stricken. This witness has no knowledge as to what the arrangement was on this ship. It was taken over by the Army.

The Court: The objection is overruled. Motion denied.

Mr. Long: Exception, Your Honor.

The Court: Exception allowed.

Q. (By Mr. Levinson): You have traveled on Liberty ships carrying war cargo?

A. Yes, sir.

Mr. Long: I object to this line of testimony unless it is shown that this witness is doing something more than sitting here guessing about what the condition was on this ship, having shown no knowledge of what the situation was in respect to the operation of the ship as compared with other ships.

The Court: The objection is overruled.

Mr. Long: An exception, please.

The Court: Exception allowed.

Mr. Levinson: Read my question, Mr. Reporter.

(Last question read)

(Testimony of Nicholas M. Gladis.)

Q. (By Mr. Levinson): Is there any difference in the responsibility on these ships carrying war cargo?

Mr. Long: We make the same objection.

The Court: The objection is overruled.

Mr. Long: Exception, please.

The Court: Exception allowed.

Q. (By Mr. Levinson): Do you understand my question, Mr. Gladis?

A. I don't get it, sir.

Q. The fact that the vessels that you traveled on carried war cargo, who is responsible for the safety of the vessel and the loading of it?

Mr. Long: We make the same objection.

The Court: The objection is overruled.

Mr. Long: An exception, please.

The Court: Exception allowed.

A. The chief mate, sir.

Mr. Long: I move that the answer of the witness be stricken as not material to this case.

The Court: The motion is denied.

Mr. Levinson: You may cross examine.

Cross Examination

By Mr. Franklin:

Q. Mr. Gladis, were you a member of the crew of the Flavel at the time of the incidents occurring to Mr. Lubinski? A. No, sir.

Q. Do you know anything about the condition of the forepeak [48] on that voyage?

A. No, sir.

(Testimony of Nicholas M. Gladis.)

Q. Do you know anything about the condition of the cargo on the vessel on that voyage?

A. No, sir.

Q. Did you know who was in charge of the vessel during the voyage?

A. No, sir.

Mr. Franklin: That is all, Mr. Gladis.

Mr. Levinson: That is all.

The Court: You may step down, Mr. Gladis. May this witness be excused? He might have work to do.

Mr. Levinson: Yes, Your Honor; he has a 2 o'clock appointment.

The Court: You are excused permanently, Mr. Gladis.

The Witness: Thank you, Your Honor.

(Witness excused)

WALTER C. LUBINSKI

recalled as a witness on behalf of Libelant, having been previously duly sworn, testified further as follows:

Direct Examination—(Continued)

Mr. Levinson: I will ask that the last question be read.

(Last question and answer read as follows:

“Q. Did you go down into the hold?

“A. Yes, sir. [49]

(Testimony of Walter C. Lubinski.)

“Q. What was your purpose in going down into the hold?

“A. We wanted to discover the source of the fire, because we didn't know what started it. None of us knew.”)

Q. (By Mr. Levinson): We are talking about the fire on August 15. You understand that, Mr. Lubinski? A. Yes, sir.

Q. What occurred while you were in the hold, Mr. Lubinski, or coming up from the hold?

A. Well, when I started to come up there were various hoses——

Q. (Interposing): Speak up, Mr. Lubinski.

A. I have a bad cold. There were various hoses on the starboard side of the deck, which was the clear side, and various members of the crew were handling it, and as I started to come up one of them hit me in the face.

Q. How was the visibility at the time you were coming up? Could they see you coming up?

A. No. They could see me at times, and at times they could not, because of the down draft, and the wind.

Q. Did they know the location of the ladder?

A. Yes, sir.

Q. Had men gone up and down that ladder before? A. Yes, sir.

Q. What happened when you were struck in the face? You say you were struck in the face by a hose? A. It knocked my mask to one side.

(Testimony of Walter C. Lubinski.)

Q. How long were you then exposed with the mask off? A. About twenty seconds, I guess.

Q. Did you get to the top deck?

A. Yes, sir; I came right up.

Q. At that particular time what was done, or what was ordered with reference to taking out the life boat?

A. When I came up I was all wet, and the skipper was up on the flying bridge, and he told me—we didn't know what was happening down there—he told me to take what men I had available and who were not doing anything, and swing out all the life boats along the rail of the boat deck.

Q. Was that done? A. Yes, sir.

Q. After that incident about August 15, where did the vessel go?

A. We went back to Adak, after about eight or nine days.

Q. During that eight or nine days' period what was the condition of your eye?

A. I was in pretty bad shape then. The doctor was giving me hypos in the arm because the pain was so bad.

Q. Where did the vessel go after you left Adak?

A. We went to Honolulu.

Q. Do you recall the date you arrived in Honolulu? A. No, sir; I do not.

Q. Can you give us approximately how long?

A. I would say approximately in the middle of September, I guess.

(Testimony of Walter C. Lubinski.)

Q. What did you do at Honolulu in connection with any hospitalization?

A. I went to the United States Public Health Service.

Q. Did they examine your eye? [51]

A. This intern looked at it, and then he sent me to an eye specialist.

Q. Did you receive any treatment in Honolulu?

A. He put some drops in my eye, and asked me if I was going back to the States, and I said yes; and he said, "Go back to your ship and go back to the States."

Q. Did you return to your ship?

A. Yes, sir.

Q. Where did the vessel go then?

A. We left Honolulu for Seattle.

Q. Do you recall the date you arrived in Seattle? A. No; I do not.

Q. Approximately.

A. About the 23rd or 24th, maybe something like that.

Q. Of what month? A. September, 1943.

Q. Did your ship pay off in Seattle?

A. Yes, sir.

Q. What did you do immediately following the pay off of the ship?

A. As soon as I could arrange transportation I went home.

Q. Where is your home?

A. My home is in Seattle now, but it was in San Francisco at that time.

(Testimony of Walter C. Lubinski.)

Q. Did I ask you if you are married?

A. Yes. I am.

Q. What did you do when you got to San Francisco?

A. I got hold of my family, and some friends of mine advised me to go to see this doctor in Salt Lake City, which I did immediately. [52]

Q. How long were you in Honolulu?

A. I was there for about three or four days—three or four treatments from this doctor, and he advised me immediately——

Mr. Franklin: (Interposing) Do not tell that.

Q. (By Mr. Levinson): Go ahead.

The Court: Pursuant to his advice, what, if anything, did you do?

Q. (By Mr. Levinson): That is right; pursuant to his advice what did you do?

A. He told me to go right back to San Francisco.

The Court: You cannot say what the doctor told you.

The Witness: To go back to San Francisco.

The Court: You cannot say what the doctor told you. Strike that.

Q. (By Mr. Levinson): What did you do?

A. I came back to San Francisco.

Q. When you got to San Francisco what occurred in connection with your treatment to your eye?

A. I entered the Marine Hospital the same day.

(Testimony of Walter C. Lubinski.)

Q. How long were you in the Marine Hospital for treatment?

A. I was an in-patient for three weeks, and an out-patient for about four months.

Q. During your in-patient treatment what did they do?

A. They gave me various shots in the arm, and a complete general physical check-up, X-ray of lungs, and prostate and massages, and complete test and complete physical check-up.

The Court: What did the doctor in Salt Lake City do?

The Witness: He treated me some and advised me to [53] go back to San Francisco and enter the Marine Hospital.

The Court: What kind of treatment, if any, did he give you?

The Witness: He had me underneath some kind of some kind of machines with an innertube that is hot, and gave me various treatments, and three bottles of different drops to put in my eyes.

The Court: Did he make any blood test of you at all?

The Witness: No, sir. He advised me to get back immediately.

Q. (By Mr. Levinson): Mr. Lubinski, prior to joining the George Flavel what was your general condition of health?

A. I was in perfect health.

Q. Prior to joining that vessel had you ever had any eye examination?

A. Yes, sir.

(Testimony of Walter C. Lubinski.)

Q. How long prior to that?

A. I would say a couple of months, I guess.

Q. Where did you receive that eye examination?

A. The American-President Lines.

Q. At that time what was the condition of your eye?

A. Perfect.

Q. Were you told or advised by anyone at any time that you ever had any trouble with your eyes?

A. No, sir.

Q. Are your parents alive?

A. Yes, sir. My mother is.

Q. Has she ever worn glasses?

A. Not until she was sixty-five years old.

Q. Have you ever been required to wear glasses?

A. No.

Q. Or any member of your family? Have you any brothers and sisters?

A. Yes.

Q. What is their condition of health in relation to eyes?

A. The last time I was home nobody that I knew of wore glasses.

The Court: Where is your home? Where was your childhood home?

The Witness: I was born in Maryland, sir.

The Court: Where do your folks live?

The Witness: My mother lives in Baltimore now, with my sister.

Q. (By Mr. Levinson): At the time of your examination in San Francisco did you get a blood test?

A. Yes, sir.

(Testimony of Walter C. Lubinski.)

Q. Were you advised of its result?

A. Yes.

Q. What was the result? A. Negative.

Q. Since leaving San Francisco what did you do; where did you go after you left San Francisco?

A. You mean after I came out of the hospital?

Q. Yes.

A. I ran for a Union office on an annual ballot, and was elected here in the Seattle Branch as patrolman. And I talked to the doctor in the United States Marine Hospital in San Francisco about that, and I asked him about my further treatment—which I was never discharged—and he told me, “Well, you can enter the hospital here [55] for out-patient treatment.”

Q. When did you come back to Seattle?

A. It will be a year this coming February—next month.

Q. What did you go to work to do?

A. I was patrolman for the Sailors' Union, which I still am.

Q. Have you had another election?

A. Yes.

Q. Are you going to be the patrolman any more? A. No, sir.

Q. That is a shore-side job? A. Yes, sir.

Q. How much does it pay?

A. \$70 a week.

Q. Mr. Lubinski, what were your earnings

(Testimony of Walter C. Lubinski.)
aboard the—I am offering Libelant's Exhibit No. 1 in evidence.

Mr. Franklin: No objection, Your Honor.

The Court: It may be admitted.

(Document received in evidence as Libelant's Exhibit No. 1.)

LIBELANT'S EXHIBIT NO. 1

Mailed to: Walter C. Lubinski, 1602 Northern Life Tower, Seattle, Washington.

ABSTRACT FROM CLINICAL RECORD

March 15, 1944

Name Lubinski, Walter C. Occupation MS

Age 26 years, Last Vessel SS "George Flavel"

Furnished hospital care from October 18, 1943,
to November 5, 1943

Furnished outpatient care from October 16, 1943,
to February 9, 1944

Diagnosis Iritis, chronic, left eye

CONDITION OF PATIENT UPON ADMISSION

Patient is well developed and well nourished white male, not appearing to be acutely ill. Physical Examination: Eyes; left, pupil enlarged and irregular, iris discolored, suggestion of circumcorneal injection, corneal nebula on left. The remainder of physical examination is essentially negative.

(Testimony of Walter C. Lubinski.)

CONDITION OF PATIENT ON NOVEMBER
5, 1943

Patient discharged with no further hospitalization necessary. He had iritis of left eye which was improved by local treatment and typhoid therapy. Patient is discharged to out-patient department. Given Atropine 1% to use t.i.d.

February 9, 1944: Condition good.

By direction of the Medical Officer in Charge.

[Seal] I. W. STEELE

Senior Surgeon Executive
Officer

U. S. Marine Hospital
San Francisco, California

Copy Received Mar. 18, 1944. Sam L. Levinson.

Q. (By Mr. Levinson): What were your earnings aboard the George Flavel, approximately?

A. For the voyage?

Q. All right; give it to us for the voyage.

A. Well, about \$1300 or \$1400.

Q. How long was the voyage?

A. Around three and one-half months.

Q. You mean \$1450?

A. I think it was around three and a half; I am not sure.

Q. You joined on the 23rd of June, and you left—— [56]

A. (Interposing): September 28—about three months and five days.

(Testimony of Walter C. Lubinski.)

The Court: \$1450?

The Witness: Yes, sir; something around that.

The Court: In three months?

The Witness: Yes, sir.

Q. (By Mr. Levinson): From June 23 to September 28? A. Yes, sir.

The Court: Was that this year?

The Witness: 1943, sir.

The Court: As a boatswain?

The Witness: As boatswain; yes, sir.

Q. (By Mr. Levinson): Mr. Lubinski, since leaving San Francisco, how has your eye been?

A. Well, it was behaving very nicely during the summer.

Q. How do you mean, behaving nicely?

A. Well, it was not bothering me.

Q. Less pain, you mean? A. Yes.

Q. Could you see out of it at all?

A. No, sir.

Q. How does it feel in the wintertime?

A. Just about the middle of November, when we got a little bad weather, my eye got very bad.

Q. In what way?

A. It got very badly inflamed and started to ache.

Q. I see you are wearing a patch.

A. Yes, sir.

Q. When did you put the patch on?

A. By the advice of the doctor at the Marine Hospital, Dr. [57] Mossman, the head doctor, the medical officer in charge of the Marine Hospital.

(Testimony of Walter C. Lubinski.)

Q. Have you been wearing that patch since?

A. Yes, sir.

Q. Were you ever examined for your eyes prior to the examination you have referred to by the American-President Line?

A. Yes, sir.

Q. By what line?

A. The Moore-McCormick Steamship Company.

Q. Do you recall about when that was?

A. 1942, I think—1941 or 1942.

Q. What was the finding then with reference to your eyes?

A. My eyes were all right.

Q. I do not know whether it was brought out on your examination, but had you seen the boxes containing the smoke bombs in the forepeak?

A. Yes, sir; I seen them in the forepeak.

Q. Had you ever seen the particular box or particular smoke bomb, that you know of?—had you ever seen the one that caused the fire, that you know of?

A. You mean after?

Q. Before.

A. I could never identify that.

Q. Where were the boxes stowed in the forepeak?

A. Some were in the carpenter shop, and some in the entrance to the carpenter shop.

Q. Did you ever have any discussion with the mate about that?

A. Yes.

Q. What was your discussion with the mate?

A. I objected to them being stowed there.

Q. When was this?

A. Just before we arrived in Attu.

(Testimony of Walter C. Lubinski.)

Q. What was his reply?

A. He said, "That is where they are going to be," and naturally he is my senior officer, and I couldn't do anything about it.

Q. Since you returned to Seattle were you examined by any other doctor, other than the doctors at the Marine Hospital? I am speaking of examinations. A. Yes, sir.

Q. Who examined you?

A. I was examined by Dr. Purman Dorman a couple of times.

Q. And you were also examined by some doctor on behalf of Mr. Long's office?

A. Yes; by two doctors. And also given a blood test by Mr. Long's doctors.

Mr. Levinson: If Your Honor will permit me, I will review my notes, but I think that is all.

The Court: Has Libelant's Exhibit No. 2 been marked for identification?

Mr. Levinson: No, but we will have it marked, Your Honor.

The Court: Let opposing counsel see it.

(Document examined by opposing counsel.)

(Document marked for identification Libelant's Exhibit No. 2.)

Q. (By Mr. Levinson): Mr. Lubinski, I hand you what has been marked for identification as Libelant's Exhibit No. 2. It bears as its imprint the official seal of the United [59] States Coast Guard. A. Yes, sir.

(Testimony of Walter C. Lubinski.)

Mr. Levinson: I am offering Libellant's Exhibit No. 2 in evidence, Your Honor, bearing the official imprint of the Government.

Mr. Franklin: If the Court please, the Respondents object to the introduction in evidence of this exhibit upon three grounds. In the first place, the regulations show on their face they were promulgated as of October 4, 1943. The incident alleged to constitute negligence in this case occurred July 15, 1943 and August 15, 1943, so obviously this document has no relation or bearing thereon.

Secondly, there is no evidence that the smoke distress bomb is a pyrotechnic. A pyrotechnic, if I understand the definition of the word, is a creation that generates fire. The evidence in this case so far before Your Honor is that the only thing that was generated here was the fumes—orange smoke, if you call it such, and certainly not fire.

And thirdly we object to the introduction of this document for the obvious reason that it can have no application, since the navigation of this vessel, which was a Liberty, was under the sole and exclusive jurisdiction of the United States Army.

The Court: If Counsel wishes he can inquire of the witness concerning whether this provision that he deems material in this case was in effect on the date of, or any other date material to this lawsuit.

Mr. Levinson: I was going to ask that question.

The Court: Has the witness read that provision? [60]

The Witness: Yes, sir.

(Testimony of Walter C. Lubinski.)

Mr. Levinson: I will read it to Your Honor.

The Court: It is not in evidence.

Mr. Levinson: Very well, Your Honor.

Q. (By Mr. Levinson): Mr. Lubinski, I show you what has been marked for identification as Libelant's Exhibit No. 2, and I will direct your attention to Section 146, 29-44, on Pages 30 and 31. I will ask you to read that, and I will ask you, without telling what it is, whether that provision was in effect, or a provision containing the same requirements, at the time this vessel was loaded, to your knowledge.

Mr. Long: I do not think, Your Honor, that is the proper way to prove a Governmental regulation, to ask some witness about it who is not shown to know anything about it whatever. We object to it.

The Court: The objection is overruled.

Q. (By Mr. Levinson): The question is, was the substance of that provision in effect at the time the George Flavel was loaded in San Francisco?

A. I am pretty sure it was; yes, sir.

Mr. Levinson: I am offering that portion of it in evidence, and I would like to offer the document itself, but if Your Honor feels I should read it, I will be glad to read that section in evidence. I prefer to offer the document.

The Court: Do you have any objection?

Mr. Franklin: Yes. We renew our objections already made on all grounds; namely, in the first place, improper proof of an existing regulation of

(Testimony of Walter C. Lubinski.)

the Government by the [61] statement of a witness, as not being the proper method of proof; secondly, that there is no evidence in the record that the smoke distress bomb was a pyrotechnic, or embraced within the terms of the purported provision No. 3, upon the ground that the provision is obviously immaterial to a situation such as existed on the George Flavel, which was under the exclusive jurisdiction of the United States Army at the time of the incident.

The Court: The last objection is overruled. The objection made on the ground that the material here in question was not pyrotechnic is overruled, because I think the word "pyrotechnic" includes inflammable materials that produce smoke or flames, which in themselves may not be a fire communicator.

For instance, like many of the substances used on gala occasions for display purposes, they include materials that throw out an illumination that looks like a flame, but which is not a flame at all. That kind of material is included in the definition of "pyrotechnic."

The objection that it is not properly proved, I will hear from Counsel for the Libelant on that.

Mr. Levinson: Your Honor will recall that I am not endeavoring to introduce this regulation as the particular regulation in effect at that time. I only identified it by asking if a similar regulation was in effect. I have no way of knowing whether it was actually modified, but I can establish by this

(Testimony of Walter C. Lubinski.)

witness, if I so desire, that the Steamboat Inspection Service has been enforcing such similar regulations, and that it is simply a modification and good practice. I am not contending [62] that that particular regulation in its written form there was in effect. My question to the witness was not in that form.

The Court: Do you not suppose it is possible for some witness, some local witness, to state under oath how this is circulated, by what authority, if any, of the Government, and what use, if any, is made of it?

Mr. Levinson: This witness can establish that, I believe. I will be glad to develop it, if Your Honor desires.

Q. (By Levinson): Mr. Lubinski, referring to what has been marked for identification as Libellant's Exhibit No. 2, who delivers those to you, or to whom are they delivered?

A. They are delivered to our office by the United States Coast Guard, to familiarize our men with them.

Q. Your office of the Union?

A. The Sailors' Union of the Pacific. They are sent by mail by the United States Government.

Q. Are your men involved in the loading of these ships? A. Yes, sir.

Mr. Levinson: Your Honor will note I am not introducing the regulation is being in effect, but establishing by that the identify of one that was in effect at the time of the loading of the vessel. Re-

(Testimony of Walter C. Lubinski.)

cently they have all been codified, and this witness has already established that has been the practice.

Mr. Long: We object to that, Your Honor, because obviously if there is any such regulation we have the Coast Guard officers here, and we have the Steamboat Inspection [63] Service officers here, and they can be called and examined and cross examined on the regulations.

The Court: I will sustain this objection without prejudice to the right of the Libelant to produce competent testimony as to the authenticity of this regulation which is involved in Libelant's Exhibit No. 2 for identification.

Mr. Levinson: You mean its authenticity as of the date of the fire?

The Court: Yes.

Mr. Levinson: You are not questioning it now on the ground——

The Court: Well, I am sustaining the objection for the present on that ground.

Mr. Levinson: Very well, Your Honor. I will attempt to remove that objection.

The Court: You may step down, Mr. Lubinski. Court will be adjourned until 2 o'clock this afternoon.

(Whereupon an adjournment was until 2:00 p.m., January 9, 1945.) [64]

Seattle, Washington

January 9, 1945, 2:00 P.M.

(All parties present as before.)

The Court: You may proceed. Libelant's Exhibit No. 3 has been marked for identification.

(Document marked for identification Libelant's Exhibit No. 3.)

Mr. Lubinski may resume the stand.

Mr. Levinson: I have here, Your Honor, proposed Libelant's Exhibit No. 3, which is a copy for official use of the United States Coast Guard, and is entitled "Regulations Governing Transportation of Military Explosives on board Vessels during Present Emergency." It is dated October 1, 1942, and on Page (a) of the document is the authority for the regulation.

Under the rule, as I understand it, such documents bearing the official imprint of the United States Coast Guard have the official designation and authority as such, and I am offering the same in evidence. I am referring to the specific section of the document which covers the particular situation at hand. (Document handed to witness.)

Mr. Franklin: If the Court please, I am not going to quibble and say it is not properly identified because there is no seal of the Coast Guard. I am sure that could be obtained, so I am not raising any objection to the fact that the regulation is offered as it is undoubtedly a valid regulation issued by the Coast Guard as October 1, 1942. [65]

But I am objecting to the introduction in evi-

(Testimony of Walter C. Lubinski.)

dence of that document for the reason that it is incompetent, irrelevant and immaterial, for the following reasons:

The portion which will be used in evidence refers, first of all, only to pyrotechnics, and there is no evidence that this smoke bomb was of a pyrotechnic nature as described in this category.

Secondly, it is issued, as appears upon its face, only for use by the Coast Guard and the Navy, and is, therefore, not binding on the Army, which would be charged with this invasion, of course.

And thirdly, in any event there is no showing up to date that this regulation was in effect as of July 15, 1943 or August 15, 1943, applicable and effective to the flotilla of this invasion.

The Court: Respecting the nature of this material as coming within this regulation, this regulation deals with explosives, does it not?

Mr. Levinson: The regulation itself, Your Honor, defines it, and the definition refers to a smoke bomb, which I pointed out to Counsel. I will be glad to read it to Your Honor.

The Court: Please give Counsel that proposed Exhibit No. 3 for identification.

Mr. Levinson: The following appears under the section headed "Ammunition." It says:

"Ammunition consists of all types of shells, projectiles, grenades, bombs, mines, torpedoes, torpedo warheads, propellant powder charges, pyrotechnics, chemical, smoke or incendiary ammunition, [66] or other devices containing explosives that are util-

(Testimony of Walter C. Lubinski.)

ized by the armed forces in the prosecution of the war.”

That is the definition.

Mr. Franklin: If the Court please, obviously this is merely a smoke distress signal, and it obviously does not come within the category of these defined products, which all have ammunition, or which are to used as projectiles or supplies for war.

This is a regulation, and a smoke bomb is carried solely for the purpose of distress purposes. It is not ammunition, it is not a bomb, and it is not an explosive in bulk. It is not a military explosive. So this provision is obviously inapplicable to this, and it is not a pyrotechnic.

The Court: That objection is overruled. What is the other one—that it was not proved to be in effect at the time of this occasion?

Mr. Franklin: It is dated October 1, 1942. The only other regulation I have been able to obtain is the one dated October, 1943, which is exactly in the same terms as this one.

The Court: Only superseding it?

Mr. Franklin: Only superseding it. This is the one that covers that period. There has been already introduced in the record a pamphlet dated October 1, 1943, which is word for word with the pamphlet dated October, 1942, and, as a matter of fact, this pamphlet dated October 1, 1942, was originally promulgated in substance in 1939, and has varied from time to time. But these are [67] the ones that are in effect.

(Testimony of Walter C. Lubinski.)

The Court: Do you wish to be heard further, Mr. Franklin?

Mr. Franklin: No, Your Honor.

The Court: The objection is overruled.

Mr. Franklin: Your Honor will allow an exception?

The Court: Exception allowed. Libelant's Exhibit No. 3 for identification is admitted in evidence.

(Pamphlet received in evidence as Libelant's Exhibit No. 3.)

Mr. Levinson: I have also offered in evidence what has been marked Libelant's Exhibit No. 2, which is the one that follows, as evidence to show that there has been no change in the regulation.

The Court: I think there ought to be some further authentication of Exhibit No. 2.

Mr. Levinson: Very well, Your Honor.

The Court: I will not admit it at this time.

Mr. Levinson: Your Honor, may I then read such portions of this exhibit that I think are pertinent?

The Court: You may do so.

Mr. Levinson: Reading from Libelant's Exhibit No. 3, Sub-Section 146.29-44, at Page 11 of the exhibit, under the title "Pyrotechnic Stowage." It reads as follows:

"Pyrotechnic ammunition shall be given ammunition stowage as described in Section 146.29-42, provided, however, such articles shall not be stowed in a compartment in which any other explosives

(Testimony of Walter C. Lubinski.)

(except class I ammunition) is stowed. Pyrotechnics shall [68] not be overstowed with other cargo. The location of this type stowage shall be away from heat and in a dry area so protected as to insure no moisture contacting the packages.

“(b) For limited quantities of pyrotechnic ammunition an alternate stowage may be utilized consisting of stowing in metal lockers or portable magazines so located as to conform with the provisions of (a) as regards other explosives, over-stowage, heat and moisture.”

The reference appears on Page 10, 146.29-42:

“Ammunition Stowage. Ammunition that is authorized to be given ammunition stowage by the provisions of the tables (sec. 146.29-100), shall be stowed in a location selected in accordance with the procedure as set forth in section 146.29-30.”

Mr. Franklin: If the Court please, obviously that is inapplicable to this situation. This is not ammunition.

If I understand Your Honor's ruling, Your Honor holds that this is embraced within the class of pyrotechnics, and if so, it is embraced within the terms of the former paragraph. This is not ammunition. There is no proof to date that it is ammunition.

The Court: The document is in evidence, and you can read any part of it.

Mr. Levinson: The section I referred to, Your Honor, should be studied in accordance with the tables, and the tables are set forth as follows. This

(Testimony of Walter C. Lubinski.)

is Section 146.29-30, on Page 7: "Location of Magazines and [69] Ammunition Stowage."

This is quite long, Your Honor, and if Your Honor will bear with me:

"A cool location being an important factor, magazines shall be built and ammunitions stowed in an authorized location in accordance with the following factors in the order listed.

"(1) A tween-deck hold, preferably a lower tween deck.

"(2) A lower hold.

"(3) In the square of a hatch. If in the square of a weather deck hatch, having wooden hatch covers, a steel plate of not less than 5 pounds weight per square foot, or other approved protection adequately secured in place, shall be fitted over the top side of the wooden hatch covers.

"(4) A shelter deck in a location as far removed from uptakes or engine casing as possible.

"(5) A forecastle, poop, or permanent deck house provided the space is ventilated and does not contain any "In use" crew accommodations, nor vessel stores and can be closed off from traffic while at sea.

"(6) Insulated spaces normally comprising refrigerator spaces may be used for the stowage of all classes of ammunition, provided all regulations relative to stowage of explosives with other dangerous articles of cargo are observed and the spaces may be ventilated sufficiently to provide a temperature consistent with the temperature of other holds

(Testimony of Walter C. Lubinski.)

of the vessel. When such spaces are fully ceiled [70] the entire compartment will be considered as a magazine, however, any pipes within the compartment shall be protected by horizontal cargo battens of a size not less than commercial 2" x 4", spaced not more than 12" apart, center to center and secured to 4" x 6" uprights spaced not more than 36" apart. Refrigerator spaces, the floors of which are lined with lead, shall not be used as a stowage for picric acid in bulk.

"(7) Explosives in bulk and classes VIII, X, and XI ammunition shall not be stowed immediately below the principal bridge. At least one compartment of normal deck height shall intervene between the bridge and the stowage of such explosives in bulk.

"(8) Explosives in bulk shall not be stowed in a compartment immediately below or adjacent to crew accommodations.

"(9) Classes VIII, X, or XI ammunition shall not be stowed in a compartment immediately below or adjacent to crew accommodations."

The only other sections marked are the sections I have heretofore read to Your Honor, which defines ammunition as including smoke bombs.

The Court: Does that complete the direct examination?

Mr. Levinson: That completes the exhibit, Your Honor.

The Court: Does that complete the direct examination? [71]

(Testimony of Walter C. Lubinski.)

Mr. Levinson: And that completes the direct examination.

Cross Examination

By Mr. Franklin:

Q. Mr. Lubinski, at the time you joined the Flavel in San Francisco, did you know you were going to participate in the Kiska invasion?

A. No, sir.

Q. Nobody, knew, did they? A. No, sir.

Q. As boatswain who issues you orders during the operation of the vessel?

A. The chief mate.

Q. Or if he is not on watch, who issues them then?

A. Nobody. The custom is he usually leaves enough orders to cover the day.

Q. He is the only individual you look to for your orders? A. That is right.

Q. How many Army transport officers assigned to the loading and discharging of cargo were on board the vessel from the time you left San Francisco until you reached Honolulu?

A. Two, sir.

Q. Do you recall their names?

A. No, sir; I do not.

Q. Was one of them Lieut. Hill?

A. That is right.

Q. And Lieut. Hearst? A. That is right.

Q. And they were in charge, were they not, of the stowage of the cargo when it was loaded in San Francisco? A. Not to my knowledge.

(Testimony of Walter C. Lubinski.)

Q. You would not know, would you?

A. No, sir.

Q. Did you see those two officers at Kiska and Attu, supervising the loading and discharging of cargo and supplies from the vessel?

A. Well, yes and no.

Q. Did you see them at Attu in that capacity?

A. At certain times; yes, sir.

Q. Did you see them at Kiska exercising the same authority, or performing that work?

A. At different intervals, yes, sir.

Q. Do you not know, of course, what instructions they gave the chief mate? A. I do not.

Q. When the vessel left San Francisco was it loaded to capacity?

A. Well, she was a troop carrier, and they put as much cargo as they possibly could in her.

Q. They not only put as much cargo as they could on her, but they carried as many troops as they could possibly squeeze in, didn't they?

A. As much as they had facilities for, sir.

Q. Didn't they carry troops beyond their facilities, and weren't they sleeping under the hatches?

A. Well, that was after we got up North.

Q. You mean after you got to Attu? [73]

A. After we left Attu, sir.

Q. But every conceivable space for cargo on the vessel was used when you left San Francisco, wasn't it? A. Yes.

(Testimony of Walter C. Lubinski.)

Q. As a matter of fact, you had deck cargo, your decks just stowed and littered with invasion cargo.

A. No, sir. We had only eight invasion barges.

Q. How large are those invasion barges?

A. Well, forward, sir, they were, I think, forty feet long, and we had four aft that were twenty feet long.

Q. And how wide?

A. About twenty by four, sir.

Q. You do not mean four feet?

A. Twenty by five would be more proper.

Q. About five feet wide?

A. About five or six feet, the smaller ones back aft.

Q. You used up all the available deck space?

A. We had two on the hatch and two in each wing.

Q. Was there any other cargo lying on the deck of the vessel when you left San Francisco for Attu, other than these landing barges?

A. We had a few boxes of K rations.

Q. As a matter of fact, all the equipment for the amphibious unit was stowed forward, wasn't it, on the deck?

A. It was stowed forward, all covered up with canvas.

Q. And that equipment consisted of what?

A. I don't know that, sir. That was covered.

Q. You saw that after it was stowed down in the forepeak, didn't you?

A. I saw some of it, yes. [74]

(Testimony of Walter C. Lubinski.)

Q. You know there was guns there, don't you?

A. I do, sir, yes.

Q. And you know that there were these smoke distress bombs? A. Yes, sir.

Q. And you know there were the food rafts?

A. Yes, sir.

Q. And those had all been laying on the deck exposed to the elements before they were stowed in the forepeak? A. Yes, sir.

Q. They were deteriorating there, weren't they, by exposure to the elements?

A. Not to my knowledge they were not.

Q. Mr. Lubinski, what was the approximate number of the amphibious unit aboard the vessel?

A. About fifteen or twenty, sir, I think.

Q. They were under the charge of their ensign?

A. Yes, sir.

Q. Do you know when their gear or ammunition and supplies was stowed in the forepeak?

A. I do not, sir.

Q. Did you receive orders from the mate to stow it in the forepeak? A. I did not.

Q. Who else would stow that in the forepeak, except the sailors?

A. Probably the chief mate.

Q. Would the chief mate carry down all that equipment himself, without any assistance from the sailors?

A. He probably got assistance from the amphibious crew. I don't know, sir. [75]

(Testimony of Walter C. Lubinski.)

Q When was it you first noticed this equipment of the amphibious unit in the forepeak of the vessel?

A. Well, it was about five or six days at sea, when I took some men down in the forepeak. We were going to make some slings for the heavy caterpillars.

The Court: When you use the word "equipment," what do you mean?

Mr. Franklin: By "equipment," if the Court please, I mean the guns they had, the smoke signals, and the food supplies, which were all part of the landing equipment of these barges which were being carried.

Mr. Levinson: If the Court please, I do not believe the witness had finished his answer.

The Court: You may finish your answer.

The Witness: We went down in the forepeak. I went down there myself with a few sailors to make some wire slings for these caterpillars. We didn't have much gear aboard. The gear the Army gave us was inadequate for that work.

Mr. Franklin: We move that the answer be stricken as not responsive. Will you read the question, please?

The Court: I would like to remind the witness that all the way through he is giving the Court the impression that you often answer questions not put to you, and I wish you would keep in mind the necessity of avoiding that. Do not give the Court that impression. Try to answer only the questions put to you, and leave other subjects to be inquired

(Testimony of Walter C. Lubinski.)

into by counsel. Counsel on both sides are very able and experienced lawyers.

The Witness: Yes, sir. [76]

The Court: And you can leave it to them to bring out the facts which they think are helpful to the Court in making a right and just decision upon your case.

Mr. Franklin: I will rephrase the question, Mr. Levinson.

Q. (By Mr. Franklin): When was it, Mr. Lubinski, that you first learned that the distress bombs of the amphibious unit had been stowed in the forepeak?

A. After we were at sea about five or six days.

Q. Out of San Francisco? A. Yes, sir.

Q. The forepeak of the Flavel is located, you said, in the extreme forward part of the vessel?

A. That is right, sir.

Q. And to gain access to the forepeak you descend a wooden ladder to the deck of the forepeak?

A. A steel ladder, sir.

Q. And then on either side of the forepeak of the Flavel, on the occasion of your trip, there were shelves running along the side of the vessel on both the port and starboard sides?

A. No, sir.

Q. Were there any shelves on either side?

A. The port side, two shelves, sir.

Q. What was on the starboard side of the vessel?

A. There were no shelves at all. We had a bunch of gear stowed over there.

(Testimony of Walter C. Lubinski.)

Q. To give the Court a rough idea of this forepeak, as you descended the ladder and turned aft, how far back would the forepeak extend? [77]

A. Around fifteen feet, sir.

Q. And then right in the center of the top deck of the forepeak was a booby hatch leading to a lower hatch?

A. Yes, sir.

Q. Where you mention the carpenter's shop in this forepeak, will you explain where that was?

A. That is on the after end of the forepeak?

Q. On what side?

A. It runs right straight through, athwartships.

Q. Does it run transversely?

A. Athwartships.

Q. Is it separated from the forepeak?

A. Yes.

Q. Or is it just the after bulkhead of the forepeak?

A. It is just the after bulkhead of the forepeak, is all it is.

Q. You do not have any doors?

A. Yes, there is a door there.

Q. What does that open into?

A. That opens into the carpenter shop, from the forepeak into the carpenter shop. It is only separated by a bulkhead, and they call it a carpenter shop.

Q. Then the carpenter shop is a separate compartment from the forepeak itself, separated by a bulkhead?

A. Yes, sir.

(Testimony of Walter C. Lubinski.)

Q. Mr. Lubinski, where were these bombs stowed?

A. Some were in the shop and some were in the forepeak.

Q. Did you observe how the bombs were packed, whether they were in individual cartons, or in boxes of several cartons?

A. To the best of my knowledge, I think there were four in [78] a carton, sir.

Q. And those four distress signals were in a cardboard carton, were they?

A. I don't remember that. I couldn't answer that.

Q. What were they held in; was it a cardboard container or a fibre board container?

A. I really don't know, sir.

Q. Didn't I understand you to say there were four in a box?

A. Four in a box. There is some kind of a container, but I don't know whether it was fibre or paper or wood. That is what I mean.

Q. They were in a completely enclosed box?

A. Yes; supposed to be.

Q. How many of those boxes did you notice, first, in the carpenter shop?

A. I couldn't answer that, sir.

Q. How many of those containers of four smoke bombs each did you notice in the forepeak?

A. Around six or so.

Q. You mean six containers of four each?

A. Yes, sir.

(Testimony of Walter C. Lubinski.)

Q. Mr. Lubinski, wasn't there only one distress signal for each one of the eight landing barges?

A. I don't know that, sir.

Q. As a matter of fact, you haven't any very clear recollection of the number or location of those smoke distress signals at this time, have you?

A. I haven't any recollection of the number.

Q. You do not know how many were stowed in the carpenter shop, nor how many were on the port side of the forepeak? [79]

A. No, sir; I do not.

Q. Who had access to the forepeak?

A. The chief officer and myself; and the sailors and the rest of the mates.

Q. Did the amphibious unit, consisting of the ensign, and I think you said twenty members——

A. (Interposing): Somewhere—I don't know exactly.

Q. Did they have access to that forepeak too?

A. After around five or six days, I should say, they were fixing their guns.

Q. As a matter of fact, didn't the amphibious unit work down in the forepeak night and day after they were beginning to go down there, repairing their guns and adjusting their gear, and getting ready for the landing?

A. No. This was long before the landing.

Q. Isn't it a fact that they did work down there in the forepeak after you left San Francisco, and on the way up to Attu?

A. Adak, sir.

Q. Up to Adak?

A. Yes, sir.

(Testimony of Walter C. Lubinski.)

Q. And isn't it a fact that the amphibious unit was working in the forepeak on their ammunition and equipment at the time the smoke distress bomb escaped at Attu on July 15, 1943? A. No, sir.

Q. When was the last time you had seen any member of the amphibious unit working down in the forepeak before the incident at Attu on July 15, 1943?

A. To the best of my knowledge, I think they finished up [80] about two days after we were in Adak.

Q. And that would be how many days before you got to Attu? A. Two weeks.

Q. Mr. Lubinski, these smoke distress signals, you said were in a container like gallon can, roughly? A. Yes, sir.

Q. I mean after it was removed from the carton or container it resembled a gallon can?

A. Yes, sir.

Q. And they had a plug or screw cap in the top, inserted in the top of the container?

A. Yes, sir.

Q. And it was necessary to break open or to unscrew the cap of the smoke bomb or distress signal in order to release its contents?

A. I don't know that, sir.

Mr. Levinson: Your Honor, may I interrupt?

The Court: Yes.

Mr. Levinson: Dr. Dorman is here, and if it would be convenient to Counsel, I would like to put him on.

(Testimony of Walter C. Lubinski.)

The Court: The Doctor may be accommodated.
You may step down, Mr. Lubinski.

(Witness temporarily excused.) [81]

DR. PURMAN DORMAN,

called as a witness on behalf of Libelant, being first
duly sworn, testified as follows:

Direct Examination

By Mr. Levinson:

Q. Will you state your name, please?

A. Purman Dorman.

Q. You are a duly licensed and practicing physician and surgeon in the State of Washington?

A. Yes, sir.

Q. How long have you been such licensed physician and surgeon in this State?

A. About twenty years.

Q. Dr. Dorman, are you now specializing in any particular practice?

A. I do only eye, ear, nose and throat.

Q. How long have you been specializing in that practice?

A. About fifteen years.

Q. Dr. Dorman, are you a member of any society that specializes in or is limited to a group of practitioners of the eye?

A. I am not a member of any society. I have been certificated by a Board whose members are eye specialists only, such a group known as the American Board of Ophthalmology.

(Testimony of Dr. Purman Dorman.)

Q. Are the members of that Board selected on some basis of proficiency in connection with the eye?

A. Those people who are examined are first passed upon by this Board to determine if their qualifications are satisfactory. They are then given a couple of examinations, [82] and references are had and inquiries are made to determine their type of standing in the community.

Q. Are there any other members of that Board in the city of Seattle at the present time?

A. Yes, upon this Board, a number. There are probably about twelve or fifteen.

Q. Will you tell the Court something of the specialized training that you have taken in connection with your profession?

A. A number of years ago I completed my specialized training in New York, followed by a short course in Vienna, and, of course, various short bits of instruction at various times in the intervening years between then and now.

Q. Are you a member or are you on the board of any national program in connection with the eyes?

A. Yes. I am the eye physician for a new Federal program termed the Vocational Rehabilitation Program, and as such I am the only eye physician in the United States upon such a program. It is a widespread program which is just beginning to get under way, and will probably derive some attention within the coming year.

(Testimony of Dr. Purman Dorman.)

Q. Have you been called to Washington in connection with that?

A. As such I was called in committee—I was going to say with other professors, but with other men, most of whom are professors in various fields, medicine, surgery, psychiatry, hospital demonstrators, nurses, and I was the eye physician upon that committee, the only eye physician. [83]

Q. Are you also a member of any other national Board in connection with blindness or treatment of the eye?

A. Yes; I have been a member of the National Society for the Prevention of Blindness for a number of years. I am the Western representative, I believe, upon such committee.

Q. Is there anything else you want to tell us about your qualifications?

A. No; that is enough. That is ample.

Q. Dr. Dorman, at my request did you examine Mr. Lubinski? A. I did.

Q. You may refer to your notes and tell me when you made the examination, what you found, and the history given you at that time.

A. I had the opportunity of examining Mr. Lubinski on or about March 29, 1944, for the first time, and at that time he gave me a long history, indicating that some time during the month of July—probably about July 10 of 1943, while he was aiding in unloading material from a hold in a ship, while smoke was pouring from the fore hatch. Mr. Lubinski realized there was something wrong and

(Testimony of Dr. Purman Dorman.)

descended into this hatch to find out what was wrong.

At that time he found a distress smoke bomb. It was necessary to make several trips into the hold to find the smoke bomb, but he was unable to find it at first, and then he was successful. He carried the hot bomb outside, carrying this bomb by means of a heavy pair of gloves. The time of this accident was about 10:00 or 10:30 in the evening.

Shortly after that incident he returned to his quarters, but about 4:00 the next morning, approximately six or seven hours after the time of the original injury, he awakened to find that both eyes, both lids of both eyes, were badly swollen.

At that time he was treated by an Army doctor, a Captain, who advised hot applications, and prescribed some form of ointment. The right eye apparently cleared up—because both were involved at the time—and returned to normal after a few days' interval, but the left eye continued to be red, inflamed, and had an excess of tears.

There was apparently some loss of vision in the left eye, and a spot was noted in his direct line of vision.

During that time under discussion he received treatment for both eyes from the Army doctor, who was stationed on the ship.

On or about August 15, 1943, while unloading a snow jeep, the gas exhaust from the motor of that jeep backfired, causing a fire to the surrounding material, within what is termed the No. 3 hold.

(Testimony of Dr. Purman Dorman.)

To put out that fire several hoses were lowered into the hold, and in line of his duty Mr. Lubinski, again using an ordinary type of gas mask, went into the hold to find the cause of the fire, being accompanied on this occasion by several other men.

During that time one of the streams of water from the hose struck him in the head, knocking his mask from his face, and allowing the fumes to find access within the mask. [85]

Within a few minutes the fire was found, but after that calendar date the left eye began to swell more than it had done so in the preceding days.

Some two weeks after that second affair, and still while he was receiving treatment from the doctor on board the ship, he consulted a doctor at Adak. That doctor advised him that because of his short stay in that particular port—further treatment should be given, but he was unable to give it—and that doctor advised him to wait until his next port of call, Honolulu, sometime around the 10th or 15th—

Mr. Franklin: Doctor, have you any independent recollection of this case at all?

The Witness: Oh, yes; I saw this man yesterday and discussed it.

Mr. Franklin: I notice you are reading from your notes.

The Witness: Not quite verbatim, Mr. Franklin. My notes contain additional to this. This is not verbatim from my notes. I am sorry. I do

(Testimony of Dr. Purman Dorman.)

not remember all the details, because I have seen a number of other cases.

Sometime about the 10th or 15th of September he consulted the Public Health Service in Honolulu. After discussion with the Department of Public Health he was advised to wait for **further** treatment for the left eye until his return to the United States. At that time the left eye still continued to cause pain.

Instead of arriving at San Francisco, where they [86] had anticipated, the boat arrived in Seattle on or about September 28, 1943. When he was paid off he did not go to the Public Health, but instead went home, and stayed home twenty-four hours, and then went to Salt Lake to consult a doctor there, Dr. Fairbanks. He was under the care of Dr. Fairbanks at Salt Lake for four or five days. Fairbanks advised him to return to the Public Health in San Francisco for continued treatment.

After that advice, and some time on or about October 4th he was taken as an in patient to the United States Marine Hospital at San Francisco. He was treated at the hospital three weeks, received various sorts of tests, and was then treated as an out patient until about February 15, 1944.

He returned to Seattle and was denied treatment at the Marine Hospital at Seattle because he had not been an active seaman for that period from September to October—or to October, and had not received any treatment for his left eye since his

(Testimony of Dr. Purman Dorman.)

departure from San Francisco. I saw him first in March of 1944.

Q. When you saw him, Doctor, what did you find? Give us your physical findings.

A. I asked him what sort of trouble he was having with his eyes. He stated that he had no pain within the left eye, but the vision was limited to a light perception only.

Now, light perception means only the acknowledgment of whether a light is on or off. It is the very first step of complete and total blindness. [87]

Q. Could you give us the nature of your examination of the eye, Doctor?

A. We endeavored to find out how hard the eye was, and decided by means of a machine called a tonometer. That tonometer is a device whereby you place it on the surface of the eyeball, measure its amount of deviation, and compare it with the normal.

In his particular case the tension was about 40 millimeters of mercury. Normal should be around 25 or 28, somewhere in there. So that indicated his eye was a little harder.

The tension in the right eye was found to be about normal, namely, 25 millimeters. The fundus of the right eye, its retina and structure, were found to be all right. But within the left we couldn't see anything, because there were a number of changes in what we term the anterior chamber, or the anterior segment of the eye.

(Testimony of Dr. Purman Dorman.)

The eye is divided into two portions, the anterior and the posterior segments. The anterior segment constitutes that area including the cornea, the fluid directly behind the cornea, called the aqueous, the iris and the lens.

The posterior chamber consists of the remainder. In order to see the posterior chamber the anterior chamber must be fairly clear. So it is not possible to say what was present in the posterior chamber, so there was no way of determining what was in there, because the anterior chamber had so many things wrong with it. [88]

There was, for example, what is termed as a swelling of the lining membrane of the cornea.

The cornea is divided into two portions, the front part, outside, that part exposed to the air, the epithelium. Then there is a posterior surface of the cornea covered by endothelium, and it is upon examination of the endothelium that we can determine what may be wrong with the eye, because there was a swelling of the lining membrane of the posterior surface of the cornea. It had what is termed a bedewing, and a bedewing is a swelling or edema of the membrane.

I purposely stress some of these technical points, because it is only by attention to their final and inner structures can you make diagnoses as to the chronicity and the future of a condition. That swollen condition indicated an increase of tension within the eye.

The iris was bulging forward, somewhat like the

(Testimony of Dr. Purman Dorman.)

hillocks in the low foothills of the Cascades. The iris could be seen to be rounded forward, bound down in certain places, like the crevices, or like the valleys between hillocks—bound down by the plastic exudate, whereas the hillocks were caused by the aqueous or fluid that had formed behind the iris.

Such a condition is found only in a severe type of iritis, the devastating, destructive type of iritis.

Due to the adhesions of the iris to the underlying lens, the nutrition of the lens had undergone—the lens itself had undergone some changes, due to a change in its nutrition. The lens was opaque, such is a frequent accompaniment of a severe uveitis.

Q. That eye, as you found it, what, in your opinion at that time was its visibility to serve as an organ of sight?

A. It was useless as an organ of sight, because its vision was limited, virtually, to light perception, which is of no value.

Q. Doctor, the eye as you saw it at that time, what is your opinion as to whether that condition is permanent or not?

A. Without question that condition is and was permanent.

Q. Doctor, before going into the question of causation, what would the prognosis of such a condition be with relation to the possible danger to the good eye, the right eye?

A. It is difficult to prognosticate concerning the future of another eye by the presence of a condition within one. All eyes do not act the same, but

(Testimony of Dr. Purman Dorman.)

upon experience we may guess that the chances are that the left eye—that it might become involved as a secondary ophthalmitis.

Mr. Franklin: You mean the right eye, don't you?

The Witness: The right eye; that is correct. It might possibly, and it might possibly not. The right eye might possibly not be damaged at all, but the chances of the left eye are, of course, known, because the left eye is valueless.

Q. (By Mr. Levinson) In that case the condition as you found it at that time, and as you found it on your examination yesterday, is there any accompaniment of pain, particularly in connection with weather changes, or exposure, or anything of that nature?

Mr. Franklin: In what eye? [90]

Mr. Levinson: In the left eye—or the right eye—either. All eyes are not the same.

The Witness: There may or may not be any pain within the left eye. What is true of one person is not always with the next. So I could only hazard a guess. There may or there may not be any pain.

Q. (By Mr. Levinson) In your examination yesterday, was there any change in the condition of the eye from your first examination, made in March of 1944?

A. Yes. The left eye had a few changes. The iris is becoming more thin and atrophic, or weakened, by lack of use. Those were the main

(Testimony of Dr. Purman Dorman.)

changes. The tension was about the same—slightly increased over what it was at a pervious date. The iris was slightly bulging more forward, but apparently is had not involved the left eye, in that 18 or 20—let us see—in that eight or nine months' interval. It is always possible that it might involve it at a later time, but as of yesterday it doesn't cause any damage to the right eye.

Q. I notice he is now wearing a patch over his eye, with the advice—or he testified—because it seemed to be more affected by cold, that is, the winter months affecting it, and causing some irritation. Is that a common thing in an eye?

A. That is very common. As a matter of fact, simply the use of the right eye for his reading, by the strain placed upon it, may cause an inflammation in the left eye, which always seems strange to the person who owns it, but not strange to the person who has seen very many of such similar things. Cold also may cause much the [91] same thing—namely, temperature changes,—usually a cold, may cause a spasm of the vessels, and a pain which may retreat to that side of the head.

Q. Is that the reason the patch is worn?

A. Well, that is probably the reason why. You have to determine by experience, and the previous doctors who have had him under observation have so advised, and undoubtedly they have had a long time to see it.

Q. You took this man's personal history?

A. Yes.

(Testimony of Dr. Purman Dorman.)

Q. From that personal history, and from the investigation and examination that you made, can you give us now your opinion as to the cause of the condition which you found at the time of your first examination, and the condition which existed yesterday?

May I add one thing before you answer the question, Doctor: there has been testimony here that the Libellant, Mr. Lubinski, was examined for his eyes several months before he joined the vessel, and at that time they were found good, he passed the eye examination for both eyes; he had another similar examination about a year prior to that time with the same result, and his own personal history is that he never had any trouble with his eyes prior to that time, and, as far as he knew, they were all right and gave him no difficulty, and there was no history in his family of eye weaknesses or difficulties with the eye. With those additional facts, Doctorfi can you then give us your opinion as to the cause of the condition which you found on your first examination?

Mr. Franklin: If I understand you, Doctor, you are [92] testifying that you found him suffering from iritis?

The Witness: That is correct.

Mr. Franklin: And as the result of your examination what did you find?

The Witness: As the result of my examination, and the taking of the history of the case, and in consideration that he had not had any eye difficulty

(Testimony of Dr. Purman Dorman.)

previous to the date of July, 1943, I came to the conclusion that that injury that he had received to his eye was amply sufficient cause for the eye condition as I found it.

Q. (By Mr. Levinson) Doctor, in your profession is it sometimes found that there is a systemic condition which may cause a similar condition to that which you found in Mr. Lubinski—is that true?

A. Yes; there may be systemic conditions.

Q. If there is such a systemic condition, how will it affect the sight of one eye compared to the other, or would it affect both eyes equally?

Mr. Franklin: You mean in iritis, or generally?

Mr. Levinson: You may cross examine later.

Mr. Franklin: I think it is only fair to advise the doctor what condition you are talking about.

The Court: The objection is overruled.

Q. (By Mr. Levinson) You may answer, Doctor.

A. I think it only fair in the discussion of this to limit our discussions more or less to what is present as to iritis or uveitis; and in general if an endogenous cause is responsible for the iritis, such endogenous cause being systemic, often such endogenous infection or trauma cause an involvement of both eyes. If it involves one [93] eye first—for it may do so—frequently the other eye is also involved, usually after but a short lapse of time between.

Q. The fact that in this instance you examined

(Testimony of Dr. Purman Dorman.)

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Q. The fact that in this instance you examined

(Testimony of Dr. Purman Dorman.)

the eye some eight months before, and found there is no particular involvement of the right eye, the good eye, as compared with the involvement you found at the time of your first examination, in March of 1944, would that support or be of any value to you in determining the question of causation, and the fact that it was or was not of endogenous origin?

A. Frequently, an endogenous trauma or infection will cause the involvement of the second eye within a short space of time.

Mr. Franklin: Just a moment; we move that answer be stricken as not responsive to the question.

The Court: It may be stricken.

Mr. Levinson: I think the question is proper, Your Honor.

Mr. Franklin: I submit the question to Your Honor.

The Court: Read the question and the answer.
(Question and answer read.)

The Court: The objection is overruled.

Q. (By Mr. Levinson) You may explain that further, Doctor, if you wish to.

A. Any time, any interval, that elapsed between approximately April 1 and January 1 would be sufficient to allow the involvement of the second eye, if such were from an endogenous origin.

Q. In the light of all your examination, and what you [94] know of this case, and the facts I have given you, is there any question in your mind

(Testimony of Dr. Purman Dorman.)

as to the cause of the present condition, with relation to the incidents which he gave you as of July, 1943?

Mr. Franklin: That is obviously improper, if the Court please, whether there is any doubt in the mind of this witness. It is immaterial what his opinion is.

The Court: That objection is sustained.

Q. (By Mr. Levinson) What is your opinion on that matter, Doctor?

Mr. Franklin: That is objected to as repetitious, if the Court please. He has already testified.

The Court: The objection is overruled.

The Witness: After the examination I am of the opinion that the present condition within his left eye could very easily and most likely have been the result of that injury, as he related it to me in my office upon the date of March 29, that injury having occurred as of about July, 1943.

Mr. Levinson: You may cross examine.

Cross Examination

By Mr. Franklin:

Q. Dr. Dorman, it is your opinion, then, that the blindness in Mr. Lubinski's left eye is due to and caused wholly and exclusively by the exposure to the smoke distress bomb at Attu, Alaska, on July 15, 1943?

A. To rephrase your question—with permission—was the smoke bomb solely responsible for the condition within [95] his eye?

(Testimony of Dr. Purman Dorman.)

Q. Is that what you referred to when you referred to his recent injury of July 15, 1943?

A. That is what I am referring to.

Q. So it is therefore your opinion that the blindness is attributable to no other circumstance than that incident?

A. No, that is not correct. It may have been aggravated, but it was not present before.

Q. Is what you are now saying, Doctor, that you think it was either caused or aggravated by the alleged exposure at Attu on July 15, 1943?

A. Well, I am sorry, but I cannot refer to the injuries by dates or places, but I can refer to it, and, possibly from my education, I would like to consider that there were two possible times, namely, the smoke exposure, the smoke bomb, and, second, the fire hose incident.

Q. Doctor, you are changing your answer, aren't you, and you are attempting to attribute some of this disability to the Kiska smoke exposure, and some of it to the earlier Attu bomb fume exposure—is that your position?

A. No. I am stating that the origin, the principal cause, was the smoke bomb exposure.

Q. Which occurred——

A. (Interposing) I do not remember where it occurred.

Q. At Attu, on July 15, 1943; is that correct, Doctor? A. That is correct.

Q. Do you know when this man became completely blind in his left eye?

(Testimony of Dr. Purman Dorman.)

A. No; I do not. [96]

Q. Did you find out from him?

A. I doubt if he would be able to tell.

Q. You mean a man would not know when he lost the sight of an eye?

A. That is right. That happens frequently.

Q. A man who has an eye that is giving him trouble so he is seeing a physician, would not know when he lost the sight in his eye?

A. That is correct.

Q. Doctor, do you know what the extent of his exposure in time of minutes was to the fumes on July 15?

A. He never described it in time by minutes, but at the time of his relation of the incident I would think that the total time exposure could not have been more than at most two minutes.

Q. Wasn't it important for you to find out how long it was exposed to this claimed deleterious fumes, so you would have some idea as to what the ultimate damage might be?

A. You can get deaf in a second.

Q. You thought it was two minutes in this case?

A. I never asked him specifically, but from the relation of the occurrence I would think that it would be probably about two minutes, the time occupied in going from the deck—he made several trips down in there and finally located about where it was, and then came down with a pair of heavy gloves, and having located it over there picked it up and got it up to the deck—I think two minutes.

(Testimony of Dr. Purman Dorman.)

Q. Doctor, do you know what kind of equipment Mr. Lubinski wore when he went down in the hold July 15, at Attu? [97] A. Yes.

Q. What did he wear?

A. He described the fact that there wasn't correct equipment, so therefore he donned what was available, an ordinary type of gas mask, and descended into this forepeak hatch to find what was causing it.

Q. Did he describe the type of gas mask to you, as to who issued it to him?

A. I believe it was issued to him by the Army personnel.

Q. Did he tell you it was defective equipment?

A. I don't remember that he stated that it was defective or correct.

Q. If it was a gas mask which enveloped his eyes and face, and he wore it during all his visits down in the forepeak, how could his eyes possibly be exposed to those fumes?

A. Gas masks, as I have investigated them in a fairly superficial way, are not designed for all types of gases or fumes or smokes, but are designed for particular ones, so that when a smoke——

Q. (Interposing) Do you know what this particular gas mask was designed for?

A. It was not designed for this distress bomb, according to the story which he gave me at that time.

Q. Do you know what the chemical contents of this distress smoke bomb were?

(Testimony of Dr. Purman Dorman.)

A. No. It contained some chemical that causes it to smoke after certain reactions take place.

Q. Do you know whether or not the chemical was an irritant or not to the eyes?

A. From what I understand, as told me by Mr. Lubinski, it [98] was irritating, not only to the eyes, but to the nose and throat.

Q. Doctor, you are aware of the general use of smoke distress signals and bombs in the present war?

A. In a superficial way.

Q. You know they are usually and commonly employed by the United States Army and Navy for various signal purposes?

A. That is correct.

Q. You know, furthermore, that part of their purpose is the use of them within close proximity to soldiers and sailors and human beings?

A. That is correct, although sometimes, even though they are designed to be used in close proximity, they still may cause an irritation.

Q. When you saw Mr. Lubinski on March 1, 1944, he then had, unfortunately, a blind eye, didn't he?

A. That is correct.

Q. Any layman could have told that?

A. No, not necessarily.

Q. And you say, Doctor, that you found him suffering from the after effect of a uveitis or iritis?

A. That is right.

Q. I will hand this document to you, Doctor.

A. I can see it, Mr. Franklin.

(Testimony of Dr. Purman Dorman.)

Q. Can you state what this document is that has been exhibited to you?

A. This is a diagrammatic cross section of an eyeball.

Q. Just as though you sliced the eyeball transversely, or in the center down?

A. As though you were to take a cross section of it, regardless [99] of whether it may be transversely or horizontally, or any meridian that may be chosen.

Q. If I understand the eye, the eye is a sphere which is encased in the bony orbit, known as the socket, is it not?

A. That is correct.

Q. And the eye is composed as a whole of three very tough membranes or layers known respectively as the sclera, the choroid, and the inner coating or retina, is that correct?

A. No. I am sorry. It consists of one tough coat, the sclera, which is the unyielding coat, and two inner layers. The choroid is the vascular layer, and the retina is the seeing layer.

Q. Externally, Doctor, what is the method of communication between the inner side of the eye and the outer side of the eye?

A. The method of communication between the inside of the eye and the outside consists of two systems, namely, the canal of Schlemm, which carries fluid from the anterior chamber outward and from the eye. The fluid within the eye is also carried out of the eye by means of the veins.

(Testimony of Dr. Purman Dorman.)

Q. The other surface of the eye, which protects it against all external objects entering it, is what? A. The epithelium.

Q. Is that a tough protective mechanism?

A. No; it is very thin.

Q. Within the eyeball, Doctor, you have what you call the iris? A. That is correct. [100]

Q. And you have what you call the ciliary body?

A. That is right.

Q. And that is called the uvea?

A. That, together with the remainder of the choroid, is termed the uveal coat.

Q. When you use the term "iritis," as in this case, or "uveitis," you mean an inflammation or infection of the inner portion of the eye, of the iris and adjacent tissues? A. That is right.

Q. And that is protected against external penetration or effects of external trauma by what factors?

A. The protective mechanisms are the outer lying coats, the endothelium, the epithelium, the sclera and the blood vessels.

Q. So when a person says, "I have got something in my eye," in reality he generally means he has something on the outside surface of the eye?

A. Absolutely right.

Q. What protection does the eye have to prevent irritants, or objects that lodge on the eyeball itself from entering or becoming imbedded within the eye, and damaging the inner structure? Don't

(Testimony of Dr. Purman Dorman.)

you have the lachrymal fluid that bathes the eye in tears, and washes off all dirt and irritation?

A. That washes them off if they are superficial.

Q. What is the cause of iritis, Doctor?

A. Books have been written as to the cause of an iritis, but briefly, an iritis may be caused by one of two causes, termed in medical language—and I use it [101] purposely—exogenous and endogenous.

Q. Can you shorten those up for us, please?

A. Exogenous are those causes outside the eyeball, which may be the surrounding structures, and the endogenous are those things which are usually contained within the human system, the human body.

Q. That is the classification employed by Fuchs in his "Diseases of the Eye"?

A. I do not know.

The Court: At this point we will take a ten minute recess.

(Recess)

The Court: You may proceed.

Q. (By Mr. Franklin): Doctor, in lay language, aren't the only two causes of iritis, traumatic iritis, due to injury, and endogenous iritis, which arises from some source of infection in the blood stream, such as syphilis, gall bladder, tonsils, or teeth?

A. There have been several attempts at classifying the causes of iritis. That classification which

(Testimony of Dr. Purman Dorman.)

you have given may be one of a particular authority.

Q. Are you familiar with Fuchs' "Diseases of the Eye"? A. I am.

Q. Is that book a textbook, a substantive authority in your profession?

A. Yes. It is an excellent book.

Q. I will hand you Fuchs' book, and direct your attention to Paragraph 219, at Page 280, and ask you if you will be good enough to read it, please, and read it out loud.

A. (Reading) "Primary Iridocyclitis. Iridocyclitis [102] arises after perforating injuries."

Q. Do you agree with that statement, Doctor, that the only traumatic type of iritis or iridocyclitis would be a penetration that would introduce the endogenous matter right through the eyeball from without?

Mr. Levinson: I object to Counsel's misstatement, if Your Honor please.

The Court: That objection is sustained, because I do not understand his statement to be what Counsel said it meant.

Q. (By Mr. Franklin): Doctor, do you agree with that statement made by Fuchs, as to the exclusive classification of traumatic iridocyclitis?

Mr. Levinson: I again object, your Honor. There is no reference that it is exclusive.

The Court: You can ask him if he agrees with the statement.

(Testimony of Dr. Purman Dorman.)

Q. (By Mr. Franklin): Do you agree with that statement as read?

A. That statement is not the complete statement of Fuchs.

Q. Would you show me wherein there is any classification in that volume, Doctor?

Mr. Levinson: I submit that is not proper cross examination.

The Court: Objection overruled.

A. This is not Fuchs' book. Under no guise is it Fuchs' book. It only has the name of Fuchs. Fuchs died in 1926.

Q. Doctor, is that book a recognized and standard treatise and authority in the profession in which you practice? [103]

A. This book, under the title of "Fuchs' Pathology" is an authority, of which there are several.

Q. And regarded so by your profession?

A. And regarded so by my profession.

The Court: Doctor, is classroom teaching part of your professional work? Is part of your everyday work classroom teaching or public speaking?

The Witness: Is this on the record?

The Court: I would like to know; yes.

The Witness: Yes. I have given several courses in connection with the eye to various organizations, various students at various times.

Q. (By Mr. Franklin): Doctor, I will hand you a volume entitled "The Relation Between Injury and Disease," published by Bobbs-Merrill and Company in 1938, and ask you to examine this and

(Testimony of Dr. Purman Dorman.)

state whether or not you are familiar with the contents of this work?—which I presume you are.

A. I am not familiar with this book.

Q. Do you know whether or not that is regarded as one of the latest authorities on the question of the connection between injury and disease, in the medical profession?

A. Being unfamiliar with the book, I would not be qualified to pass upon that.

Q. Doctor, do you agree with the statement which is made in this work——

Mr. Levinson: (Interposing) Just a moment, Your Honor; in view of the doctor's statement that he is not familiar with the work I submit it is improper cross examination to refer to that book.

Mr. Franklin: I think, Your Honor, he can testify whether he agrees with these few words.

The Court: The objection is overruled.

Q. (By Mr. Franklin): Doctor, would you state whether or not you agree with the following statement, found at Page 522:

“Each of the various forms of iritis mentioned above has not infrequently been ascribed by workmen to some injury incident to their occupations. This is especially true of syphilitic iritis, a condition which develops apparently spontaneously, reaching its maximum degree of severity within two to four days from its onset, hence is a condition which the patient is very likely to attribute to some trauma received during the preceding several days or weeks. Many other patients erroneously ascribe

(Testimony of Dr. Purman Dorman.)

their iritis to gases or fumes that recently may have irritated their eyes.

“Iritis never is due to the presence of foreign bodies in the conjunctival sac, nor to nonpenetrating injuries of the cornea or sclera, nor to the irritation of the conjunctiva by chemical agents. In fact, the only form of iritis which can be directly attributed to trauma is that which follows penetrating wounds of the eyeball which reach an expose the iris.”

Do you agree with that statement?

A. No, sir. I am sorry. It is too dogmatic a statement, because there are exceptions.

Q. When Mr. Lubinski presented himself to you for examination [105] did you make any examination yourself by X-ray or otherwise to determine whether he was suffering from any systemic infection?

A. No, I did not.

Mr. Franklin: That is all. Thank you, Doctor.

Redirect Examination

By Mr. Levinson:

Q. Just one other question, Doctor. An irritant gas which comes in contact with the human body, what is the effect of that irritant, compared to the various parts of the body with which it may come into contact, with reference to either a dry surface or a mucuous or wet surface? Is there a difference?

A. Is there a difference in reaction, as I interpret it, between the various surfaces?

(Testimony of Dr. Purman Dorman.)

Q. That is right.

Mr. Franklin: If the Court please, we object to that.

Mr. Levinson: This may be direct examination, but I overlooked it.

Mr. Franklin: I am not making that objection, but I object unless the Doctor is furnished with evidence as to the chemical composition of the gas. If not, he obviously cannot answer. It is speculation.

Mr. Levinson: That is a matter of cross examination.

The Court: The objection is overruled.

Q. (By Mr. Levinson): Will you answer the question?—whether there is a difference? [106]

A. Is there a difference in reaction upon certain portions of the body to an irritant, as, for example, a dry skin or a moist skin?

Q. Yes.

A. To that question the answer is yes, and it is typified in everyday life, because I will be in a smoke-filled room and my eyes will be red and irritated, but the skin of my hands suffers no irritation, or the skin of my face suffers no irritation, and so it is true of many a gas. The skin of the eyes or nose, frequently of the mouth, may be irritated, whereas the remainder of the skin, the dry skin, suffers no irritation.

Q. Does the affinity or the chemical combination of the moisture of either the mucuous membranes

(Testimony of Dr. Purman Dorman.)

or the surface of the eyeball activate or affect some gases?

A. That reaction is not always the same. Sometimes it is due to the presence of moisture in the different membranes. Sometimes it is due to a change in the composition of that membrane.

Mr. Levinson: I think that is all.

Recross Examination

By Mr. Franklin:

Q. Do you know what this gas was at Kiska?

A. No.

Q. The chemical contents? A. No, sir.

Mr. Franklin: That is all, thank you.

Mr. Levinson: May the Doctor be excused?

The Court: He may be excused.

(Witness excused)

Mr. Levinson: If Your Honor please, these boys outside are waiting for their calls on the board. They are waiting to be shipped out, and with Your Honor's permission I would like leave to call some of the other men rather than continuing with Mr. Lubinski, so they can be excused.

The Court: That is agreeable to the Court, and that may be done.

WILLIAM HUCK

called as a witness on behalf of Libellant, being first duly sworn, testified as follows:

(Testimony of William Huck.)

Direct Examination

By Mr. Levinson:

Q. Will you state your name, please?

A. William Huck.

Q. Where do you live?

A. 2329 Yale Avenue North, Seattle.

Q. What is your occupation? A. Seaman.

Q. How long have you followed that occupation?

A. Thirty-two years.

Q. In the deck department on vessels?

A. Yes, sir; all the time.

Q. Mr. Huck, are you familiar with the custom and practice [108] of stowing combustible materials on merchant vessels of the United States? Answer that question yes or no. A. Yes, sir.

Q. What is that practice with relation to the stowing of any combustible material in the forepeak of a vessel?

Mr. Franklin: That is objected to, if the Court please, as incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

Mr. Franklin: An exception, Your Honor.

The Court: Exception allowed.

A. Well, all paints, all combustibles are stored in an airtight—well, it is not air-tight, but it is tin lined and a steel door, no portholes, and a smothering system.

Q. Is it customary or is it good seamanship to stow such materials in the forepeak of a vessel where they have ship's stores?

(Testimony of William Huck.)

A. No, sir; it is not.

Q. Mr. Huck, you are an active merchant seaman?
A. Yes, sir.

Q. You have been working as such on vessels during these war times?
A. Yes, sir.

Q. Carrying war cargoes?
A. Yes, sir.

Q. To Alaskan waters?
A. Yes, sir.

Q. Mr. Huck, under those conditions, the carrying of war cargo and war material to Alaskan waters, who is responsible for the loading of the ship and for the manner of its stowage? [109]

Mr. Long: That is incompetent, irrelevant and immaterial, Your Honor, and certainly could have no binding effect on the issue in this case. The ship was taken over by the Army for the invasion. What may be the practice on some other ship going from here to Juneau, even though it may have war materials aboard, would certainly have no relationship to invasion, a vessel taken over exclusively by the Army.

The Court: The objection is overruled.

Mr. Long: An exception, please.

The Court: Exception allowed.

A. Well, the master is really in charge of the ship.

Q. Who is the officer directly under him who has supervision over that?

A. The chief officer, or first mate.

Mr. Levinson: You may cross examine.

(Testimony of William Huck.)

Cross Examination

By Mr. Franklin:

Q. You were not a member of the George Flavel at the time of the Kiska invasion?

A. No, sir.

Q. You were not a member of the crew?

A. No, sir.

Mr. Franklin: That is all.

Mr. Levinson: That is all.

(Witness excused) [110]

JOHN CONNOLLY

called as a witness on behalf of Libellant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levinson:

Q. Will you state your name, please?

A. John Connolly.

Q. What is your occupation?

A. At the present time I am able seaman.

Q. How long have you been following that occupation?

A. I have been going to sea since 1914, up to 1926, and from 1926 until 1941 I was a longshoreman in the city of Seattle. At the present time I am a seaman.

Q. Since 1941? A. Yes, sir.

Q. Where is your home?

A. In Seattle, sir.

(Testimony of John Connolly.)

Q. Mr. Connolly, are you familiar with the customary practice from the standpoint of good seamanship as to the stowage of combustible materials on a vessel? Answer that yes or no, first.

A. Yes.

Q. Mr. Connolly, can you tell us whether it is good seamanship or custom to stow combustible material of any nature in the forepeak of a vessel where ship's stores are kept, and the men go in and out?

A. No, sir.

Mr. Franklin: Just a moment, please; we object to that, if the Court please, on the ground that the question [111] is incompetent, irrelevant and immaterial, and no proper proof of custom binding the Respondents in this case.

The Court: The objection is overruled.

Q. (By Mr. Levinson): Will you answer the question?

A. No, sir.

Q. Mr. Connolly, have you sailed on vessels since 1941 carrying military and war cargo?

A. I have, sir.

Q. To Alaskan waters?

A. Yes, sir.

Q. In the carriage of such cargo by such vessels are you familiar with the practice—or can you tell me in the carriage of such cargo by such vessels who is the person in charge of the loading of such vessel, and the stowage of its cargo? Answer that yes or no, first, whether you can tell me that.

A. Yes, I can tell you, sir.

Q. Who is the person?

(Testimony of John Connolly.)

A. The chief officer, sir.

Mr. Franklin: If the Court please, we move that the answer be stricken.

The Court: The motion is denied.

Mr. Levinson: You may cross examine.

Cross-Examination

By Mr. Franklin:

Q. You were not present, of course, Mr. Connolly when the Flavel was loaded in San Francisco, about June 23, 1943? A. No, sir. [112]

Q. Do you know who was in charge at that time? A. No, sir.

Mr. Franklin: That is all.

Mr. Levinson: That is all.

The Court: These two men may be excused, the last two witnesses.

(Witness excused)

WALTER C. LUBINSKI

recalled as a witness on behalf of Libelant, having been previously duly sworn, testified further as follows:

Cross Examination—(Continued)

By Mr. Franklin:

Q. Mr. Lubinski, when you went forward at the time of the Kiska fire, whose gas mask did you employ before you went down in the forepeak?

A. That is something I don't know, sir.

Q. It was an Army gas mask, was it?

(Testimony of Walter C. Lubinski.)

A. I suppose so. A regulation gas mask.

Q. You have so testified, haven't you?

A. Yes.

Q. In your earlier deposition, that it was an Army gas mask? A. Yes, sir?

Q. From what you observed of that gas mask, and the use you subjected it to, was it satisfactory and efficient in every way?

A. I suppose so, sir. [113]

Q. Well, was it or wasn't it?

A. Yes, sir.

Q. It was? A. Yes.

Q. Mr. Lubinski, how long were you down there exposed to these fumes at Kiska—I mean at Attu?—at Attu on July 15, 1943?

A. Did you say "exposed"?

Q. Yes, sir. How long in terms of minutes were you down in the forepeak at Attu, and exposed to those fumes?

A. Oh, I would say around fifteen minutes.

Q. Do you know the contents of those bombs, what the chemical composition was?

A. No, sir; I do not.

Q. Mr. Lubinski, did other men use the same mask that you used at Attu, to go down in the forepeak and search for this—

A. (Interposing) They used the same type; yes, sir.

Q. Didn't the mate use the same mask, or Mr. Seather, the second officer?

A. I do not recall that.

(Testimony of Walter C. Lubinski.)

Q. Would you describe to the Court what this mask was like, and how it fitted over the face, and what the breathing space was?

A. Well, it is a black or rubberized composition, with a rubber strip that fits over the head, with goggles, and has this little blower.

Q. A canister?

A. No; not a canister; just a regular blower. When you breathe through it is the same as blowing a bazoo; it [114] flaps up and down.

Q. There is a mouthpiece, isn't there?

A. No.

Q. How do you breathe?

A. Just the same as we are breathing now.

Q. Is the mouthpiece filtered with a very fine mesh?

A. I don't know. I couldn't answer that.

Q. How are the eyes protected against fumes or gas in that mask that you wore?

A. It has these goggles and the mask fits over it.

Q. Does the rubber outside of the mask fit right tight over the goggles, the rubber composition fits right into the goggles? A. It does; yes, sir.

Q. And that whole mask, then, fits tightly over the face?

A. It fits over this part of the face. (Illustrating) It covers half your face.

Q. Who brought the smoke bomb up from the forepeak at Attu, after it was discovered?

A. That I don't know.

(Testimony of Walter C. Lubinski.)

Q. Didn't you assist in bringing it up?

A. I did not, sir. I assisted in finding it, but who brought it up I don't know. I don't recall that.

Q. Where did you find it?

A. It was floating, sir; floating around in the forepeak.

Q. What part of the forepeak, if you know?

A. I don't know.

Q. Subsequently did you make any investigation or examination to determine whether one of the cartons had been broken into and one of the smoke bombs removed? [115]

A. I did see that, yes; once.

Q. What did you see?

A. I seen there was one can missing.

Q. When you say "missing," what was the condition of the carton or container in which it had been resting?

A. It was ripped open.

Q. I beg your pardon?

A. It was torn open, or ripped open.

Q. Mr. Lubinski, how long after the exposure at Attu before you became completely blind in your eye?

A. Well, I couldn't say any definite time. I was just gradually getting blind.

Q. When was it on this voyage that you were first aware that you were blind, or could only distinguish light from darkness?

A. I cannot answer that. I don't know.

(Testimony of Walter C. Lubinski.)

Q. Mr. Lubinski, how long were you exposed to the fire at Kiska on the morning of the invasion?

A. Oh, I would say about twenty or thirty seconds, sir.

Q. How long were you down in the hatch before you were struck in the face by the water from the deck?

A. Around eight or ten minutes, I guess.

Q. What was the condition with reference to visibility in the hatch during those eight or ten minutes?

A. Down below?

Q. Yes. Was the entire hatch up to the coaming smothered in smoke?

A. It was smothered in smoke at different intervals.

Q. Because of that smoke didn't you have to feel your way around the hatch? [116]

A. Yes, sir; at different intervals.

Q. You do not know who turned the hose on you, do you?

A. No, sir. I couldn't see that.

Q. You say that just when you were at the foot of the ladder going up to the hatch that somebody directed a stream of water and dislodged your mask?

A. Yes, sir.

Q. Was this the same type of mask you had used at Attu?

A. Yes, sir.

Q. Was this likewise a fairly satisfactory and efficient mask?

A. Yes, sir.

Q. Mr. Lubinski, when the water was hurled against your face so that your gas mask was

(Testimony of Walter C. Lubinski.)

knocked off or away from your face, was it knocked completely off or just sideways?

A. It just swept it off like that. (Illustrating)

Q. Did it fall to the ground?

A. No, sir; it did not fall.

Q. To readjust the mask all you would have been obliged to do would have been to replace it?

A. Yes.

Q. Swing it back into position?

A. Yes, sir.

Q. And that would have taken how long a period of time?

A. I didn't have a chance to do that, because they kept hitting me with the hose. I kept yelling up from the hatch.

Q. Why didn't you readjust your mask before you ascended to the hatch? [117]

Mr. Levinson: He has just answered that, Your Honor.

The Court: The objection is overruled. He may answer the question.

A. Well, things happened so fast I just can't explain that.

Q. (By Mr. Franklin): Mr. Lubinski, when was it that you first learned the identity of this seaman you say kicked the smoke bomb at Attu, on July 15, 1943?

A. When was election day?—November 7?

Q. November 7. A. November 7, 1944.

Q. Up to that time you didn't know who it was?

A. No, sir; I did not.

(Testimony of Walter C. Lubinski.)

Q. Did you ever make any complaint to the chief mate or any of the other officers of the ship as to the fact that your eyes had been injured by reason of the exposure to the distress signal fumes at Attu? A. I did.

Q. To whom did you make those complaints?

A. To the chief officer.

Q. The chief officer is Mr. Kristiansen?

A. That is right.

Q. How soon after the accident at Attu, July 15, 1943, did you make that complaint?

A. Well, right after the exposure to the smoke. After we found out what it was I went down to the doctor and he washed my eyes out with boric acid.

Q. I asked you when did you first make the complaints to the chief mate?

A. The next morning. [118]

Q. Did you continue to make those complaints as the voyage progressed?

A. I didn't have to. The chief mate came down in my room every day. He seen what was wrong with me.

Q. Did you discuss very frequently with the chief mate, after the Attu smoke distress bomb, that you were troubled with your eyes as the result of the exposure to those fumes? A. I did.

Q. Did you discuss that with any other member of the officer personnel of the vessel?

A. No, sir; outside of the Army doctor.

Q. Mr. Lubinski, when did you first make any

(Testimony of Walter C. Lubinski.)

contention that your gas mask had been dislodged at Kiska on the morning of the invasion?

A. I don't understand that.

Q. When did you first make any claim of that character to the ship's officers, or representatives of the Alaska Steamship Company?

A. I don't quite understand that question.

Q. In your libel you claim that on August 15, 1943, by reason of the negligence of a fellow seaman in directing the contents of a hose in your direction, that your mask was dislodged, and by reason thereof your eyes were irritated. My question is, when did you first make that claim or contention with reference to your injury?

A. I still don't understand you.

Q. Did you ever complain to the officers that you had been struck in the face by water at Kiska on August 15, 1943, and your eyes damaged by reason of that irritation? [119]

A. Well, I did, sir, but I didn't have to complain. We were all hit with the water.

Q. During the month of November, 1943, did you have occasion to make a written claim with relation to the condition of your eyes?

A. I did, sir.

Q. Where did you make that written claim?

A. In Mr. Black's office, in San Francisco, California.

Q. You were referred to him, were you not, by the Alaska Steamship Company?

(Testimony of Walter C. Lubinski.)

A. I was referred to him by Mr. Belie, of the Grace Line.

Q. Had you discussed your condition with Mr. Belie, of the Grace Line?

A. Just for a few minutes, and he sent me to Mr. Black.

Q. Did you tell Mr. Belie at the time of your discussion with him as to your condition, as to the occurrence of the Kiska incident on August 15, 1943?

A. I may have, sir, and I may not have. I don't recall.

Q. Do you have any recollection as to whether you did or did not?

A. I said I don't know, sir.

Q. Mr. Lubinski, how many times did you have occasion to discuss the matter of your injury at Mr. Black's office?

A. Oh, three or four times.

Q. Do you remember the individual you consulted and contacted in relation to your claim?

A. Mr. Ray Frick, sir.

Q. Did you give Mr. Frick any signed statement relative to the occurrence of your trouble?

A. I did, sir. [120]

Q. Was that a long typewritten statement?

A. It was, sir.

Q. And in that statement that you gave Mr. Frick did you make any mention of or make any reference to the injury which occurred at Kiska, Alaska, August 15, 1943, with specific reference to

(Testimony of Walter C. Lubinski.)

the fact that a seaman had played a hose upon your face so that the gas mask was knocked off?

A. I don't recall that.

Q. Would you say that you did? Is it your recollection now that you did or did not advise Mr. Frick of that incident?

A. I don't know, sir. It has been quite a while ago.

Q. Mr. Lubinski, I will first show this document to Counsel and then hand it to you, a typewritten statement, and ask you if that is the statement you signed in Mr. Frick's office relative to the occurrence of this injury, and which I notice is signed on each page.

(Document marked for identification Respondents' Exhibit A-1.)

That is the statement you signed, Mr. Lubinski?

A. Yes; that is.

Q. As a matter of fact, your signature appears on each of the three sheets, does it not?

A. Yes, sir.

Mr. Franklin: If the Court please, we offer that statement in evidence.

Mr. Levinson: I have no objection.

The Court: That exhibit is now admitted in evidence as Respondents' Exhibit A-1. [121]

(Document received in evidence as Respondents' Exhibit A-1.)

(Testimony of Walter C. Lubinski.)

RESPONDENTS' EXHIBIT No. A-1

I, Walter C. Lubinski, signed on the S.S. "George Flavel" on Coastwise articles at San Francisco on June 23, 1943 as bos'n. I reside at 56 Mason Street, San Francisco, California.

On or about July 15, 1943 at about 10 o'clock P.M. while the vessel was at Attu, Aleutian Islands, the fire alarm was sounded by the sounding of the ship's bell. It was my duty upon the sounding of the fire alarm to go to my fire station at hydrant No. 8 situated between the No. 4 and 5 hatches amidships. However, someone called out "fire in forepeak," and as I could see smoke coming from the forepeak, I immediately went there to do what I could under the circumstances. I put on a gas mask which was the regular standard mask, and which we had all been issued and which was in first class condition in every way. I went down into the forepeak, in fact I was the first one to go down, and I remained down there about ten minutes on this first occasion. I discovered that the plug in a distress signal which was in the forepeak had been pulled out by someone which, of course, released the orange colored smoke from the distress signal. This distress signal is substantially the same as a one gallon can with a plug in the top, and the purpose of it is to release an orange colored smoke to be seen by the searchers in case of distress.

I had no idea who pulled this plug out of the distress signal as there were some 1,200 troops aboard,

(Testimony of Walter C. Lubinski.)

about a hundred sailors in addition to the crew of the vessel which numbered about fifty men.

After remaining down in the forepeak for about ten minutes, I came up for air, and I went down again on three other occasions for periods of about ten minutes each. It was necessary to make a number of trips down into the forepeak because at first the smoke was so dense we could not see our way around, and I wanted to be certain there was in fact no actual fire.

About eight hours after the above-described incident, my eye-lids commenced to swell up, and I reported to Captain Paul Ziegler, the doctor aboard the vessel, who put some drops in my eyes and told me I would be all right in a short time. Several days later the swelling in my eye-lids had gone back to normal.

On or about August 15, 1943, we participated in the invasion of Kiska at about 10:30 A.M., and at this time a fire broke out in the No. 3 hold. While I did not actually see what caused this fire, I was told by Army officers that a soldier had started up a snow jeep and that a spark or something ignited some of the sleeping bags which were stowed in the No. 3 hold, and in turn wood and coal became ignited and were smoldering, and there was a great deal of smoke. I also went down into the No. 3 hold after putting on my gas mask, and stayed down there for such long periods of time as I could stand it, and after about two hours we got this fire out.

(Testimony of Walter C. Lubinski.)

It seems to me that almost immediately after the incident involving the distress signal, I began to lose vision in my left eye, and this continued to get worse, and after the Kiska fire, I apparently had practically lost my entire vision in the left eye. My right eye is perfectly all right. While the vessel was at Adak, Aleutian Islands, on about September 7th, I reported to Lt. Kaven, a Navy eye specialist. This was the first opportunity I had had to report to any doctor ashore. In other words, at the very first opportunity, I requested to be sent ashore, which request was granted, and I was examined by this specialist. Dr. Kaven prescribed boric acid saturated solutions twice a day for 20 minute periods, which instructions I followed.

The vessel then proceeded to Honolulu and arrived there about September 15, 1943. Because of a Naval regulation which prohibits anyone going ashore for 24 hours after arrival, I was not able to report to a doctor there until the following day, and I then reported to the U. S. Public Health Service, and was examined by Dr. Brown who put some drops in my eyes, and I was then examined by Dr. Morgan, who also put some drops in my eyes and diagnosed my condition as iritis. I then returned to the vessel, and we sailed the following day for Seattle, Washington, arriving there about September 24, 1943, and we paid off for the entire voyage on September 28, 1943, and I received all of my straight wages, overtime and bonuses for the entire trip.

(Testimony of Walter C. Lubinski.)

After waiting for eight days for transportation, I proceeded to San Francisco by train, arriving October 6, 1943. We were put off the train at Portland for two days by Military Authorities, and I stopped at a hotel, the name of which I believe was the "Rosalyn." While at Portland, I did not seek any medical attention.

After arriving at San Francisco on October 6th, I did not report to the Marine Hospital until October 16th, and I was then made an outpatient until October 18th, when I was made an inpatient and remained as such until November 5, 1943, when I was again made an outpatient, and I am presently under outpatient treatment.

I have read the foregoing statement, and it is true and correct in all respects.

WALTER C. LUBINSKI

Witness:

SHIRLEY K. OLDROYD

San Francisco, California

Dated: November 13, 1943.

Mr. Franklin: I will ask to have this marked for identification.

The Court: It may be marked for identification.

(Document marked for identification Respondents' Exhibit A-2.)

Mr. Franklin: We offer that certificate in evidence. Counsel says there is no objection.

(Testimony of Walter C. Lubinski.)

The Court: Respondents' Exhibit A-2 is now admitted in evidence.

(Document received in evidence as Respondents' Exhibit A-2.)

RESPONDENTS' EXHIBIT No. A-2

Given to patient.

CERTIFICATE OF HOSPITAL AND OUTPATIENT TREATMENT

U. S. Marine Hospital, San Francisco, Calif.

Date January 14, 1944

1. Name of patient Lubinski, Walter C.
2. Brief abstract of patient's statement as to how and when disability was incurred: Patient states he had iritis, left eye, about Aug. 1943 while in Alaska. (Rept. by Navy Dr.) Never wore glasses.
3. Diagnosis: Chronic iridocyclitis of left eye.
4. Complications and operations: None.
5. Date of admission to hospital: October 18, 1943.
6. Date of discharge from hospital: November 5, 1943.
7. Date of admission to outpatient department: October 16, 1943.
8. Date of discharge from outpatient department: Not yet discharged.
9. Condition on discharge: Not yet discharged from outpatient treatment.

(Testimony of Walter C. Lubinski.)

10. Number of days completely disabled: From October 16, 1943 to January 14, 1944 and continuing indefinitely.

12. Prognosis: Guarded.

[Seal]

S. L. CHRISTIAN

Medical Officer in Charge

FK

N. B.—This certificate is furnished to the patient to enable him to collect insurance benefits that may be due him and is to take the place of the certificate required by the insurance companies from private physicians who attend persons insured. It is compiled from the official records of the hospital and is signed by a medical officer of the United States Government over his official title.

Q. (By Mr. Franklin): Mr. Lubinski, before your service aboard the Flavel, about 1941, did you have occasion to have medical treatment for any condition?

A. I did.

Q. For what condition?

A. I had a localized soft chancre, in Panama.

Q. You were on board the vessel Lake Frances at that time?

A. I was.

Q. How long were you hospitalized at Panama because of that condition?

A. About ten days.

(Testimony of Walter C. Lubinski.)

Q. Was the usual syphilitic treatment given you for that condition?

Mr. Levinson: Just a moment; that is not what this man said.

Q. (By Mr. Franklin): What treatment was given you for that condition? [122]

A. Just the same as you would treat a little boil or pimple.

Q. Since that time have you had any recurrences of that condition? A. I have not, sir.

Q. Have you had frequent blood tests?

A. I have, sir.

Q. How many since that time, in all, roughly?

A. Oh, roughly I would say between ten and fifteen.

Q. What has been the result?

A. Wasserman's and Kann's, all negative.

Mr. Franklin: That is all. Thank you.

Redirect Examination

By Mr. Levinson:

Q. Do you recall, Mr. Lubinski, where the amphibious gear was stowed when you left San Francisco?

A. It was over on the port side, forward.

Q. On what deck?

A. On the forward deck.

Q. How was it covered? A. With a tarp.

Q. Was it lashed down?

A. It was also lashed secure.

Q. In your opinion as a seaman was it lashed and secured in such a way—

(Testimony of Walter C. Lubinski.)

A. (Interposing): It was seaworthy; yes, sir.

Q. That was the condition when you left?

A. Yes.

Q. Counsel asked you when you discovered that these smoke [123] bombs had been moved into the forepeak, and you stated some five or six days after you left San Francisco. What was the incident that caused you to discover that?

A. Myself and a couple of sailors were going down to splice some wire slings, and all this stuff was stowed down there; and those forepeaks are small, anyway, and that is what made us discover the stuff.

Q. Were you able to do your work normally with the material there? A. No, sir.

Q. What was the trouble?

A. All that stuff was in the way there.

Q. That stuff that was in the way, was it ordinary ship's gear that belonged in there?

A. No, sir.

Q. Had you made any report or objection to the mate about that? A. Yes, sir; I had.

Q. What was his reply?

Mr. Franklin: That is repetitious, if Your Honor please.

Mr. Levinson: Yes; I covered that.

Q. (By Mr. Levinson): When the vessel got to Attu did the vessel participate in the Attu invasion as such?

A. No, sir.

(Testimony of Walter C. Lubinski.)

Q. Do you recall whether or not the invasion was over when you got there?

A. There was already a dock built there, sir.

Q. Was it under any activity at that time?

A. No, sir. The island was cleaned up. [124]

Q. What did you do at Attu in connection with taking on any additional men or cargo?

A. We came alongside the dock, and we were the second ship alongside the new dock, and the troops were all out. We unloaded the troops, disembarked them.

Q. This fire that occurred, did that occur before or after the vessel had come alongside the dock?

A. After the vessel came alongside the dock.

Q. Counsel has directed your attention to a certain statement which you signed in the office of Mr. John Black. Who is Mr. John Black?

A. I never met Mr. Black.

Q. What is his office when you go up there? What does it say on the door?

A. It says "John Black," or something. I don't recall what it states on the door.

The Court: Is he employed by the State of Washington or the steamship company, or the Union or the United States, if you know?

The Witness: To my knowledge, sir, he is an insurance lawyer.

Q. (By Mr. Levinson): By whom were you sent to Mr. Black's office?

A. Mr. Belie.

(Testimony of Walter C. Lubinski.)

Q. Is Mr. Frick also in that office, associated with Mr. Black? A. Yes, sir.

Q. And is Miss Oldroyd in that office, also employed by Mr. Black?

A. I don't know. There is probably twenty girls there. [125]

Q. This was in about November, 1943; is that about right? A. Yes.

Q. In what city? A. San Francisco.

Q. Were you then under treatment at the hospital? A. Yes.

Mr. Levinson: I have no further questions.

Recross Examination

By Mr. Franklin:

Q. What hospital do you mean?

A. The United States Marine Hospital; San Francisco, California.

Q. As part of the settlement of the negotiations, or discussions with Mr. Frick, were you sent for examination to a Dr. Berkan, in San Francisco, California? A. I was.

Q. During all this time you were a patient of the United States Marine Hospital at San Francisco? A. I was, sir.

Q. What was the name of the physician at the United States Marine Hospital who was treating you during all this time?

A. Dr. Schumacher.

Q. You were under his care for treatment exclusively for what period of time, roughly?

A. Five months.

(Testimony of Walter C. Lubinski.)

Q. From October until you came north?

A. Until February.

Q. You came north in February, 1944? [126]

A. Yes.

Q. You were employed as a patrolman at the Seamen's Union until what time?

A. I am still employed.

Q. I understood you to say an adverse election had affected your status.

A. Well, I am in office until the 8th of February.

Q. On a monthly salary of \$79 a week?

A. That is correct.

Mr. Franklin: That is all.

The Court: You may step down.

(Witness excused.)

Mr. Levinson: Your Honor, I now have some depositions.

The Court: If that is true we will take a fresh start on that tomorrow morning. The Court will now be adjourned until tomorrow morning at 10 o'clock.

(Whereupon an adjournment was taken until January 10, 1945, at the hour of 10:00 A.M.)

January 10, 1945

10:00 O'Clock A.M.

The Court: Are the parties ready to proceed?

Mr. Levinson: The Iibelant is ready.

Mr. Franklin: The Respondents are ready.

The Court: I may have to ask the indulgence of

counsel at times during the day with expected interruptions in connection with some administrative matters that have been before the Court for a day or two.

Mr. Levinson: May I also ask the indulgence of your Honor. I find that I have an appointment at four o'clock this afternoon that is rather important.

The Court: We will try to arrange it, Mr. Levinson. Do you have any better idea now how long you think the case will take?

Mr. Levinson: The Libelant has only two depositions which I think will be concluded in about 30 minutes. That is all we have for the Libelant. There are perhaps half a dozen depositions, some of them quite long, for the Respondents. I do not know how many the Respondents intend to use. And I understand there will be extra testimony. As far as we are concerned I am quite sure that we will be through in about 30 minutes.

Mr. Franklin: I would anticipate, your Honor, that we would conclude our case normally today. We have two witnesses whose testimony will be quite brief, and then the depositions, some of which we probably will not find it necessary to introduce in evidence. So I would expect to conclude our case today. We are perfectly agreeable to [128] accommodating counsel as to his four o'clock appointment.

The Court: Off the record.

(Discussion off the record.)

You may proceed with your depositions for the Libelant.

Mr. Levinson: Your Honor, we will proceed with the reading of the deposition of Steve Uzdadinis. This deposition was taken in my office at Seattle on November 9, 1944.

STEVEN UZDADINIS,

called as a witness on behalf of Libellant, testified by deposition as follows:

Direct Examination

By Mr. Levinson:

Q. Will you state your name, please?

A. Steven Uzdadinis.

Q. What is your occupation, Mr. Uzdadinis?

A. I am a sailor.

Q. How long have you been going to sea?

A. About six years.

Q. In what part of the crew do you sail?

A. I have sailed on both the deck and the steward's department.

Q. You are at present on a vessel?

A. Yes, I am.

Q. And you do not know whether you will be here at the time this case comes to trial?

A. I have no idea about it.

Q. You have no idea where you will be? [129]

A. No.

Q. You are a merchant seaman, regularly employed?

A. That is right.

Q. Were you a member of the crew of the

(Deposition of Steven Uzdadinis.)

Steamship George Flavel sometime in the summer of 1943? A. I was.

Q. Were you a member of the crew of that vessel on its voyage from San Francisco to the Aleutian Islands? A. I was.

Q. On that voyage state generally what was carried, as far as you know.

A. As far as I know there was a little ammunition, there was coal, there was wood, and there was jeeps.

Q. A general military cargo?

A. General military cargo.

Q. Did you have any other crew or any other passengers on that ship, as well as the regular ship's crew?

A. A few Army personnel, troops, that was all—troops and the amphibious crew.

Q. As part of the cargo of that vessel, can you state whether or not there were any so-called smoke bombs?

A. I wouldn't say it was part of the cargo, but that hatch belonged to the amphibious crew.

Q. It was being carried on the vessel?

A. It was being carried on the vessel, yes.

Q. Do you know where it was originally stowed before it was stowed in the forepeak?

A. No, I don't.

Q. When you became aware of the place of its stowage, where was it stowed? [130]

A. I know it was stowed below, in the forepeak, and at the time it was stowed I noticed the mate

(Deposition of Steven Uzdadinis.)

supervising the stowage of that, because I was on lookout at the time.

Q. And the forepeak has two general rooms, has it not? A. Yes, it has.

Q. What are they described as?

A. One is the boatswain's storeroom. There is an upper and lower, and on the upper storeroom it is divided in two. The after part of it is the carpenter shop.

Q. With reference to the boatswain's storeroom, or the carpenter shop, in which of those two rooms were the smoke bombs stowed?

A. In the carpenter shop.

Q. Do you recall the occasion of a fire which started in the forepeak while the vessel was at Attu, about July 15, 1943?

A. Yes. I was one of the first ones there after the call, or after the alarm, rather.

Q. Prior to the time that the fire was discovered what were you ordered to do with reference to a visit or a call in the forepeak?

A. I was sent up there for a couple of wrenches, and hammer or block. I just don't remember just exactly what I went up there for, but I know it was a couple of wrenches, at least.

Q. How did you go down into the forepeak?

A. I went through the only entrance there, the hatch, and went below.

Q. When you got down there, go ahead and tell exactly what [131] you did.

A. Looking for the wrenches I rummaged

(Deposition of Steven Uzdadinis.)

around there a bit in the forward part of the storeroom, or the boatswain's storeroom, and I found one. I knew I needed another, so I kept looking. At that point, when I couldn't find any more in the storeroom, I walked into the carpenter shop.

Q. Describe the general appearance of the carpenter shop, with reference to the smoke bombs and any other gear that was stowed there.

A. Well, about all that was stowed there was cases of what belonged to the amphibious crew. Half of that carpenter shop was taken up by that.

Q. Was there any change in the condition of the articles and the way they were stowed in the carpenter shop from the time they were first stowed there and the time that you were down on this occasion?

A. Well, when I first noticed them in there, that is, before this location, they were in sort of orderly condition, but this time they were stowed in more or less disorderly fashion, such as some of them in there rummaging around and taking their supplies and distributing them, or something like that. In other words, cases piled in pell mell condition, and around the deck, which they were not supposed to be.

Q. Who is responsible for the condition of the carpenter shop?

A. I suppose the carpenter is. No one else is supposed to go in there.

Q. When you went into the carpenter shop on this occasion, state whether or not there was any

(Deposition of Steven Uzdadinis.)

change in the [132] condition of the shop from what you have just described.

A. Well, when I went in there, there was no change, just the condition down there. The carpenter very seldom worked in the carpenter shop.

Q. Exactly what did you find in there, and describe it, what you saw lying around there.

A. Well, it was only those cases. They were on the deck, and one on top of another, and halfway—well, they just stood about, in a sense.

Q. Was there anything else there besides these boxes containing smoke bombs?

A. Oh, yes; the tools that they repair the guns with, and I think part of the guns were stowed in there, too.

Q. What was your purpose in going into the carpenter shop?

A. To look for another wrench, or a pair of pliers, because I knew the amphibious crew kept their tools in there, and also I thought maybe the carpenter would have some tools in there, too.

Q. In your search for the article you were looking for, state what you did.

A. I looked around, I rummaged around in those tools a bit, in the tool case, and I suppose I happened to kick the first case that was right by me, and then I left.

Q. What was in the case that you kicked?

A. Well, as far as I remember, I noticed on oc-

(Deposition of Steven Uzdadinis.)

casion before that, I looked in that case and I think there was one of the smoke bombs missing.

Q. How many smoke bombs are ordinarily carried in a case? A. I think four.

Q. How long did you remain in that room after this [133] occasion?

A. About fifteen or twenty seconds.

Q. Then where did you go?

A. I walked into the storeroom, the boatswain's storeroom, and stood there about a minute or two, I suppose, and I left.

Q. Where did you go from there?

A. From the boatswain's storeroom I went back to the No. 2 hold, and I had the gear with me. I had a wrench, and I think a hammer and pair of pliers, and I lowered them down into the hold.

Q. How did you lower them down into the hold?

A. On a heaving line.

Q. What happened while you were there?

A. Just about after I finished lowering them down I heard a call of fire, or they yelled, "Fire."

Q. How long was it after you left the storeroom?

A. I would say roughly about four or five minutes, something like that.

Q. Then after you heard this call of fire, what did you do?

A. I yelled down in the hold that there was a fire forward, in the boatswain's storeroom or the forepeak.

Q. Did you look to see where the smoke was coming from?

(Deposition of Steven Uzdadinis.)

A. I went down there, because I heard there was a fire. I heard somebody yelling, "Fire in the forepeak."

Q. They yelled, "Fire in the forepeak?"

A. "Fire in the forepeak."

Q. What did you do?

A. I rushed forward, and the first thing I did when I passed the ventilator I saw the orange smoke coming up [134] through the ventilator, and then I looked in the hatch and saw it full of smoke, and it was impossible to go below. The next thing I did, I had in mind putting out a hose, but I saw someone taking care of that already, and a few minutes after it was full of smoke, and I ran amidships to get a fire extinguisher and some breathing apparatus.

Q. Was that a so-called gas mask, or an apparatus which generates its own oxygen?

A. It has its own oxygen with it. It is an oxygen breathing apparatus.

Q. Go ahead and tell what occurred, what you saw there.

A. After I brought those back I had someone help me with that fire extinguisher. I don't know—it must have taken me a little more than five minutes or so. The first thing I saw was Lubinski come up out of the hatch, and that was all.

Q. Did you go down into the hatch?

A. No, I did not.

Q. Do you know about how long it took them to put out the fire?

(Deposition of Steven Uzdadinis.)

A. I would say they played around there——

Mr. Morrow: Was there a fire?

Q. (By Mr. Levinson—continuing): To put out the smoke, or whatever it was.

A. Well, they didn't know what it was until they finally did discover what caused it, about half an hour, I would say, altogether.

Q. Were you present when the source of the fire was discovered, or the smoke?

A. Yes, I was. [135]

Q. What was it?

A. It was a smoke bomb. They brought up a can.

Q. Can you state whether or not it was a similar smoke bomb to the one in the box which you kicked?

A. Yes, I can, because of the fact that one time when I first went down there—that is when I first did investigate them—I took one of them out and wanted to know what it was.

Q. You looked at it?

A. Yes, I did; I looked at it.

Q. Did you advise anyone at that time what you had done down in the storeroom? The answer to that is first, yes or no, and then you can explain it.

A. Well, yes, I did.

Q. Who?

A. The only one was my buddy.

Q. Did you advise anybody else?

A. No. I felt more or less embarrassed, and I

(Deposition of Steven Uzdadinis.)

thought I would be ridiculous from the fact I did such a thing, that I was the cause of it.

Q. Were you on that vessel in August 15, 1943, about a month later, when a fire occurred in one of the holds? A. Yes, I was.

Q. Did you have any duty to perform in connection with that fire?

A. Well, I did perform a duty.

Q. What was that?

A. Well, first of all I handled the hose on deck, and then I went below and I supervised the rigging up of hoses from different parts of the vessel—that is, in the [136] hold.

Q. At that fire did you observe Mr. Lubinski, the boatswain? A. Yes, I did.

Q. What was the occasion, and state what you saw.

A. I was looking into the hold at the time—there was a door right there in between deck—and I saw “Ski” coming up, and he was soaking wet. He was all wet, completely all wet.

Q. Were you in a position to observe after the first fire the condition—or did you hear any complaint from Mr. Lubinski concerning his eyes?

A. Yes, I did.

Q. What did you observe as to that matter?

A. Well, the first part of it he was complaining that something was troubling his eye, and that was all.

Q. With relation to the first fire, when did you notice the condition or hear his complaint?

(Deposition of Steven Uzdadinis.)

A. Well, I just can't exactly tell you. It must have been at least a day or so, or two days. I can't say exactly.

Mr. Levinson: You may cross-examine.

Cross-Examination

By Mr. Morrow:

Q. Mr. Uzdadinis, as I understand your story you were instructed to go down in the forepeak and find some wrenches or pliers? A. Yes, sir.

Q. And you did go in the forepeak, is that right?

A. Yes, sir; I did.

Q. That has only one entrance, has it? [137]

A. It has.

Q. That is right up in the forepeak of the ship?

A. That is right.

Q. There is a small——

A. (Interposing): Scuttle, we call it, or the booby hatch, rather.

Q. The booby hatch? A. Yes.

Q. After going into one storeroom you went in the carpenter's room? A. Yes, I did.

Q. And you couldn't find what you were looking for? A. That is right.

Q. While you were down there you didn't take one of those smoke bombs out of a box, did you?

A. No, I did not.

Q. You didn't touch one of the smoke bombs, did you? A. I did not.

Q. You did not pull the pin out of the smoke bomb, which would release the smoke?

A. No.

(Deposition of Steven Uzdadinis.)

Q. You didn't handle the bombs in any way?

A. I did not.

Q. As I understand it, all you did was to give one of the boxes a kick?

A. Well, there was one box I picked up, and I tossed it to the side a little more, and this one in particular, I just kicked it. Well, I kicked it enough so that it would move about roughly a foot, and probably went like that (illustrating). [138]

Mr. Levinson: You illustrated a sort of bouncing motion?

The Witness: Yes, I did.

Q. (By Mr. Morrow): And nothing happened when you kicked it?

A. No; nothing happened.

Q. No smoke came out?

A. No. The box was completely covered. I mean it still had its cover on.

Q. As I understand, you were down there about a minute after you did that?

A. Well, I was there in the carpenter shop about a minute, yes,—no, about fifteen or twenty seconds or so. Immediately after I kicked that I walked out of there, and then I took one more look around the forecastle.

Q. And there was no smoke coming out of there at that time?

A. No.

Q. And you went on outside up through the booty hatch?

A. Yes, I did.

Q. And in doing that you had to climb ten or fifteen steps on the ladder, I suppose?

(Deposition of Steven Uzdadinis.)

A. About that. I don't know how many there was.

Q. Something like that?

A. Something like that.

Q. So that you were probably down there in the forepeak hatch a minute or two after you left the carpenter shop?

A. Well, I wouldn't say that. Possibly about a minute, a little more than a minute.

Q. You took a look around?

A. I took one turn around there and then I walked right [139] out.

Q. If there had been any smoke in there at the time, you would have noticed it, wouldn't you?

A. Well, I don't know.

Q. Well, you didn't notice any smoke there?

A. I didn't notice anything.

Q. As a matter of fact, you thought you might have caused this?

A. Yes. I have always had that in mind.

Q. You have had that feeling? A. Yes.

Q. But there is really nothing at all which you can state which you definitely think that you definitely caused that?

A. Well, because of the fact if I kicked that, I immediately knew that there was smoke bombs in that case, and I kind of heard—or I mean I thought—I knew it was that, because I kind of heard that because the way the gas behaved, and I thought back a little before, and I remembered looking in that case, and I saw there were three of them in

(Deposition of Steven Uzdadinis.)

there instead of four, and one was missing. There may have been six, but I thought it was four in the case, so that is why I have always had the feeling that I caused it.

Q. But you do not know that any one of those bombs emitted any smoke, do you?

A. Well, yes, after they brought it up. I saw the can, and the can was exactly the type of can that I saw in that case. I knew it was a can like that.

Q. You knew it was a can like that, but you do not know [140] whether it was that particular can?

A. No, I do not.

Q. Or one of the cans in that particular case?

A. No; I don't know if it was exactly one of the cans in that particular case. It may have been the case that I tossed up. I mean I picked up a case and threw it maybe three feet away from me, upon top of another pile.

Q. Or it might have been any other can down there in the forepeak? A. Yes.

Q. That is right, isn't it?

A. Well, it could be.

Q. In other words, you do not know that you caused the gas to emit from any of those cans—you do not know it actually of your own personal knowledge, do you? A. No, I really don't know.

Q. You did not know, either, whether one of the members of the amphibious force entered the forepeak after you were there?

A. Well, I don't know, but I am sure—I always

(Deposition of Steven Uzdadinis.)

had the belief that I was the only one in that forepeak because of the circumstances involved. In other words, I did not think anyone had time enough to get up to the forepeak, or anything like that.

Q. That is what you feel and think?

A. That is what I feel and think.

Q. And not what you actually know?

A. No, I don't know, actually know it.

Q. How long have you known Mr. Lubinski?

A. Well, I have known him for the first time when I met him, when I came aboard that ship.

Q. That was the first time you had met him?

A. That was the first time I had met him.

Mr. Levinson: Your Honor, as to that next question, we object to it.

Mr. Franklin: We will omit that question.

Mr. Levinson: I move that it be stricken, that question.

The Court: It will be stricken.

Q. (By Mr. Morrow): Did you know anything about this man's physical condition before you met him?

A. Nothing whatsoever.

Q. What you knew about him you knew from what happened on board the ship?

A. That is right.

Q. So far as the complaint of his eyes was concerned, you remember that he did complain about his eyes?

A. Yes. We more or less lived together, naturally in one group there, I and the rest of the crew,

(Deposition of Steven Uzdadinis.)

and people that associated with him every day would naturally know about it.

Q. Do you recall the first time he made any complaint about his eyes, the actual time and place, and who were present?

A. Well, no, I don't recall that.

Q. You do not recall that?

A. No, I could not. That is, I could not set a definite time.

Q. As a matter of fact, he made no complaint immediately [142] after this first accident, did he?

A. I couldn't say that, because in effect I didn't associate with him twenty-four hours a day. He may have said something to the nearest person to him and then forgot about it for a day or so, and then made the complaint again. That is, he didn't confide in me.

Q. As I understand the thing, you have a recollection that he did make some complaint about his eyes?

A. Yes.

Q. Of course, he didn't know at the time what caused the trouble to his eyes, did he?

A. Well, I couldn't say anything about that.

Q. As I understand your testimony, the complaint of Lubinski was that he was having trouble with his eyes; that is right, isn't it?

A. Yes, that is right.

Q. As to the cause of the complaint, you had no knowledge?

A. Well, we assumed——

Mr. Levinson: You cannot tell what you assumed; just what you heard.

(Deposition of Steven Uzdadinis.)

Q. (By Mr. Morrow): Of course he, himself, as I understand, made no complaint until months afterwards that there was any smoke got in his eyes; that is right, isn't it?

A. Well, Lubinski once or twice, I think we discussed the thing as to the cause of the trouble with his eyes, and there was someone else that had that trouble, and I just don't recall who it was, but we kind of thought it was from smoke.

Mr. Levinson: Was that discussed, or what you thought? [143]

A. Well, once or twice, as I recall it, we sat around the messroom at coffee time, or something like that, so we kind of figured it was from the smoke. That was about the only thing, because another fellow—well, he had trouble with his eyes, too.

Q. Who? A. I just don't know who.

Q. You do not remember who?

A. I don't just recall, but I recall the conversation.

Q. So far as you know Lubinski may have had trouble with his eyes when you first met him?

A. So far as I know he may have had and may not have had.

Mr. Levinson: That is not a fair question. Was any complaint made prior to that time?

Mr. Morrow: I am asking the questions:

Q. (By Mr. Morrow): You do not know whether he had trouble with his eyes before this first fire or not, do you? A. No, I do not.

Q. He may have had, so far as you know?

(Deposition of Steven Uzdadinis.)

A. Well, as far as I know he may have, and he may not have had.

Q. When Mr. Lubinski went down in the forepeak hatch he had a gas mask, didn't he?

A. He did.

Q. And all the other men had on gas masks?

A. Everyone that went in the forepeak had a gas mask.

Q. And those gas masks protect a man's eyes from smoke and gasses, don't they?

A. Well, I wouldn't know about that. You just put it on over your head. I think it is mostly the breathing [144]

Q. That is what it is for, isn't it, to protect you?

A. To protect you from the foul air as you breathe.

Q. Did you come in contact with the gas?

A. I did not, other than just smelling it when it was coming up through the ventilator. That is the only thing I did.

Q. It didn't have any harmful effect on you?

A. Well, I was out in the open at the time, and I just got close to it for a second or so, and that was all.

Q. It didn't have any harmful effects on you?

A. Well, as I said before it didn't have, but I got a breath of it, and that was all, and I felt it in my throat.

Q. Nobody else made any complaints, did they?

A. I think there was one person.

Q. You do not know?

(Deposition of Steven Uzdadinis.)

A. Well, I am trying to think. I am trying to be sure if it is him or not, this person, that affected his eyes. But other than that, no one else.

Q. You do not remember that? A. No.

Q. You do not remember whether anybody else had any trouble?

A. Well, I know there was another person that had trouble, but right now I just can't exactly recall, because it was not as obvious as Lubinski's.

Q. You are referring, are you not, to this conversation, or some time when there was some discussion about it, isn't that what you refer to?

A. That is right.

Q. What I am talking about is your own personal knowledge. [145] You knew of no other trouble aboard the ship on account of anybody sustaining any harm through smoke? A. No.

Q. In other words, all you have in the back of your mind now is some vague conversation, or some vague talk at some place which you do not recall, about some other person, isn't that right?

A. That is right.

Q. On this second occasion where there was actually a fire, where was that, what port?

A. That was in No. 3, in Kiska.

Q. As I understand it, at that time you stated that it was your station and you did handle a hose on deck to put out the fire?

A. That is right. That was not my particular station. In case of a general alarm I would go to my station, maybe in any part of the ship. I ran

position of Steven Uzdadinis.)

ard and saw they were putting out the hose, immediately helped to handle it, because the fire was great and one man can't handle it. After that someone told me to go below and to the small hose they had running through the quarters. They come from different directions and sometimes you have to put two together. So, you have to go through other means in order to rig up several hoses to the same hose.

On that occasion, as I understand it, you reeving Mr. Lubinski down in No. 3 hold?

I didn't see him down in the hold, but I saw when he was coming up, because when you come up the ladder—I was standing right by the door, as I said before, and [146] the door is right close to the ladder, and I was standing right there when he came up, and he came up out of the smoke, and the smoke was halfway down there so you couldn't see him. When he came up he was cussing a little bit, cetera, and he was all wet.

He had his gas mask on on that occasion?

Yes.

You didn't know on this occasion, either, whether he got any smoke or gas in his eyes, do

I don't know anything about that, no. I know what was in the hold and that is all.

So that neither on the first occasion nor on the second occasion have you any personal knowledge of what Mr. Lubinski got any gas or smoke in his

(Deposition of Steven Uzdadinis.)

A. Well, I am trying to think. I am trying to be sure if it is him or not, this person, that affected his eyes. But other than that, no one else.

Q. You do not remember that? A. No.

Q. You do not remember whether anybody else had any trouble?

A. Well, I know there was another person that had trouble, but right now I just can't exactly recall, because it was not as obvious as Lubinski's.

Q. You are referring, are you not, to this conversation, or some time when there was some discussion about it, isn't that what you refer to?

A. That is right.

Q. What I am talking about is your own personal knowledge. [145] You knew of no other trouble aboard the ship on account of anybody sustaining any harm through smoke? A. No.

Q. In other words, all you have in the back of your mind now is some vague conversation, or some vague talk at some place which you do not recall, about some other person, isn't that right?

A. That is right.

Q. On this second occasion where there was actually a fire, where was that, what port?

A. That was in No. 3, in Kiska.

Q. As I understand it, at that time you stated that it was your station and you did handle a hose on deck to put out the fire?

A. That is right. That was not my particular station. In case of a general alarm I would go to my station, maybe in any part of the ship. I ran

(Deposition of Steven Uzdadinis.)

forward and saw they were putting out the hose, and I immediately helped to handle it, because the pressure was great and one man can't handle it. But after that someone told me to go below and rig up the small hose they had running through the troop quarters. They come from different directions, and sometimes you have to put two together. That is, you have to go through other means in order to rig up several hoses to the same hose.

Q. On that occasion, as I understand it, you recall seeing Mr. Lubinski down in No. 3 hold?

A. I didn't see him down in the hold, but I saw him when he was coming up, because when you come up the ladder—I was standing right by the door, as I said before, and [146] the door is right close to the ladder, and I was standing right there when he came up, and he came up out of the smoke, and the smoke was halfway down there so you couldn't see deeper. When he came up he was cussing a little bit, et cetera, and he was all wet.

Q. He had his gas mask on on that occasion?

A. Yes.

Q. You didn't know on this occasion, either, whether he got any smoke or gas in his eyes, do you?

A. I don't know anything about that, no. I know he was in the hold and that is all.

Q. So that neither on the first occasion nor on the second occasion have you any personal knowledge that Mr. Lubinski got any gas or smoke in his eyes?

(Deposition of Steven Uzdadinis.)

A. I couldn't see the smoke going in his eyes. I know he was in the hold at the time the accidents took place.

Q. But you couldn't state one way or the other as to whether he got any smoke or gas in his eyes on either occasion? A. No, I could not.

Q. You have no knowledge of that?

A. Well, no. I can't tell you anything about it.

Q. And you do not recall that he made any definite complaint? A. Yes, he did.

Q. Immediately following?

A. Immediately following—

Q. (Interposing): On either occasion. I believe it was your testimony that he did not make any complaint immediately following either occasion.

A. That is not exact. He could have made it to Mr. Levinson if he [147] was there at the time, or anybody else.

Q. That is right, but you didn't hear him?

A. Not until a day or so later, or something like that—or two days, whatever it was.

Q. As I recall your testimony on direct examination you stated that you couldn't state that definitely. I got the impression you didn't know whether it was two or three days after, or it might have been a month or two months.

A. Well, no. I know it was within a few days where I had knowledge that he had trouble with his eyes. As a matter of fact, it must have been the second day or so. But directly he didn't state any-

(Deposition of Steven Uzdadinis.)

thing to me. I mean immediately following that incident.

Q. When you speak of knowledge, aren't you referring to some talk or conversation, rather than any personal knowledge? A. No.

Q. You do not pretend to know that he got smoke in his eyes, or do you?

A. Well, I don't know if he got the smoke in his eyes or not. I know one thing, he was down there, and naturally he must have had the smoke get in his eyes.

Q. As I understood your direct examination, you knew of a complaint that he had of an ailment to his eyes, but it was unrelated to any smoke or gas, isn't that true?

Mr. Franklin: Then there is some colloquy followed by a question by Mr. Morrow on page 27.

Q. (By Mr. Morrow): As I understand your direct examination [148] the impression I got from your direct examination, you knew that he made a complaint of some ailment to his eyes; you do not recall exactly when that complaint was made, nor do you relate it to any smoke or gas on either of these particular occasions?

A. I did relate it to the gas in the first case.

Q. In the first case?

A. Yes. In the first case I related that to the gas, and as I said before—well, he didn't tell me directly the first day or the second day—it must have been about the second or third day, where it was obvious that he had trouble, and it was more than

(Deposition of Steven Uzdadinis.)

a matter of conversation amongst us. Sometimes I didn't even see the boatswain for a day or so because we work in different shifts, and I am asleep.

Mr. Levinson: Did you say different shifts?

The Witness: Yes. We work at different times.

Q. (By Mr. Morrow): You were not on the same shift as the boatswain; you didn't have the same watch? A. No, I did not.

Q. So that you had very little occasion to see him?

A. Well, I can see him most any time. The boatswain was in there at coffee time, et cetera—now, I am all “buggered” up—what I am trying to say is that he didn't tell me immediately, come up to me as if I was a doctor.

Q. You mean he didn't make any personal complaint to you?

A. Not to me. He may have made it to possibly ten other people, but not to me.

Q. He made no complaint to you personally at any time? [149]

A. That is right. As soon as it became obvious that he did have trouble, well, then we sort of discussed the matter. I mean as a group.

Q. Then if he made a personal complaint to you at any time, you would not be able to tell me, of course, what complaint he made, that is, his exact words to others.

Mr. Levinson: That is argumentative.

Q. (Br. Mr. Morrow): You do not know what his actual complaint was to others, do you?

(Deposition of Steven Uzdadinis.)

A. Yes, I do, to others. It was not only I knew that he had that trouble with his eyes—I mean I even questioned him on it, what he thought it was, and he said it must have been that smoke up in the forepeak.

Q. Then you did have a conversation with him?

A. Sure, but a day or so later, or two days later, or three days.

Q. Where did you have the conversation?

A. I cannot say. It must have been in the mess room, or it may have been in his room.

Q. What did you say and what did he say?

A. Well, I just wanted to know how he felt, and what-not. I can't say what I said and what I didn't say, or what he said.

Q. What did he say?

A. I know this much, that he related it to the smoke in the forepeak.

Q. You do not recall what he said?

A. No; I don't even recall what I said.

Mr. Morrow: That is all. [150]

Mr. Levinson: Just one other question. When you went in the forepeak to get this wrench, was there anyone else there?

The Witness: No one was there.

Mr. Levinson: That is all. Do you waive reading and signing your deposition, Mr. Uzdadinis?

The Witness: Yes.

Mr. Morrow: And we waive signature.

(Deposition concluded)

Mr. Levinson: I am offering the deposition of Mr. Uzdadinis in evidence, your Honor, as his testimony.

The Court: His testimony is received in evidence as a part of the Libelant's case.

Mr. Levinson: I next wish to read the deposition of Peter Corvia, your Honor. This deposition was taken in San Francisco on December 16, 1944, at which Mr. Edward R. Kay, of the office of John Black, appeared as proctor for Respondents, and Mr. Albert Michelson appeared on my behalf.

PETER CORVIA,

a witness called on behalf of the libelant, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, nad nothing but the truth, testified as follows:

Direct Examination

Mr. Michelson:

Q. What is your name?

A. Peter Corvia. [151]

Q. Where do you reside?

A. 1615 Bridge Avenue, Oakland, California.

Q. What is your occupation?

A. Seaman.

Q. Do you expect to be in the State of Washington in the near future?

A. I don't think so.

Q. You spend your time going to sea?

A. Yes.

(Deposition of Peter Corvia.)

Q. And you expect to leave within the next few days? A. Pretty soon; very shortly.

Q. How long have you been going to sea? A.

A. About 12 years.

Q. In what capacity do you go to sea?

A. Able seaman.

Q. During the year 1943 were you a member of the crew of the SS George Flavel?

A. Yes, I was.

Q. Do you remember when you went to work on that vessel in 1943?

Have you any objection to his referring to his discharge, Mr. Kay?

Mr. Kay: No.

Q. (By Mr. Michelson): Have you your discharge there?

A. I haven't got it with me. It was somewhere around July, if I remember right.

Mr. Kay: Pardon me. What was the previous question?

(Record read)

Q. (Mr. Michelson): Was it somewhere around the first of July? A. I think so, yes.

Q. And up to what time, approximately, if you remember?

A. Late September or the early part of October, if I remember right.

Q. Do you know Walter Lubinski?

A. I do.

Q. Was he on that vessel while you were on the vessel? A. He was.

(Deposition of Peter Corvia.)

Q. What was he doing on the vessel during that time? A. He was boatswain.

Q. What ports did the vessel touch upon on that voyage to the best of your recollection?

A. Attu.

Q. Where is that?

A. In the Aleutian Islands.

Q. Where else?

A. Adak, in Alaska, and Kiska, and Nome. There were some other places, but I don't remember the names of them.

Q. Do you recollect any occurrence while you were on that vessel in the forepeak of the vessel when smoke came out of that forepeak?

A. Do I what?

Q. Do you recollect any occurrence when smoke poured out of the forepeak of the vessel?

A. I don't get what you mean. I was down in the hold when that happened—you know, when the fire happened.

Q. I am speaking of the forepeak, when the vessel was at Attu. Do you remember anything unusual that occurred that day?

A. Well, there was a fire in the forepeak.

Q. What was the first you knew of that fire?

A. Well, I was down in No. 2 hold with the boatswain and a couple of more fellows when somebody cried down, "Fire froward."

Q. What happened then?

A. Well, the boatswain told us to drop what

(Deposition of Peter Corvia.)

we were doing and get up forward as fast as we could.

Q. Get forward on what deck?

A. To get forward where the fire was. You see, we were down in the hold when the boatswain told us to drop everything we were doing and go forward to the fire.

Q. Did you go?

A. We all went right away.

Q. Who do you mean by "all"?

A. Well, the boatswain and myself and a couple of other fellows who were working there.

Q. Who was the boatswain?

A. Lubinski.

Q. When you got up to the forepeak what did you see there?

A. Well, a big mass of orange smoke.

Q. What kind of smoke?

A. Orange smoke from one of those smoke bombs.

Q. Where was the smoke coming from?

A. It was coming out of the forward storeroom.

Q. That is located in the forepeak, is it?

A. In the forepeak, yes.

Q. Was Lubinski there at the time?

A. He was right there, yes.

Q. What did Lubinski do?

A. Somebody handed him a mask, and he went right down right away. [154]

Q. Did he have the mask on when you arrived there?

(Deposition of Peter Corvia.)

A. No, somebody handed it to him when we got up there.

Q. And who put it on?

A. I helped him and another fellow. We were all excited, and I don't know who the heck the other guy was.

Q. Did Lubinski help put it on himself.

A. Oh, yes.

Q. Then what did he do?

A. Well, he went right down.

Q. Did you remain in that vicinity?

A. For a few minutes, yes.

Q. Did you again see Lubinski?

A. I seen him when he came up, yes.

Q. How long was it between the time you saw him go down and the time when he came up?

A. It must have been around several minutes or so.

Mr. Kay: Pardon me. What was your answer?

A. It must have been several minutes or so.

Q. (Mr. Michelson): Did you see him go down?

A. Yes, I seen him go down.

Q. Right into the forepeak?

A. That is right.

Q. Where were you watching?

A. I was watching right at the hatch there.

Q. What is that—a hatch opening? Just describe it a little bit.

A. It is a square hatch opening where they store all the ship's stores and ammunition there.

(Deposition of Peter Corvia.)

Q. Did you watch him go down?

A. I did, yes. [155]

Q. What did he use to go down?

A. There is a ladder that runs up and down there. He went right down there.

Q. When Lubinski came up what did he do?

A. Well, he came up, and he took his mask off to get some air. The smoke, you know, was pretty bad; and as I remember he had it all over his face. You know, that stuff clings to you. And we rushed him over to the side to get some air.

Q. What was the stuff you say he had all over him?

A. It was the flare from the smoke bomb, or whatever it is.

Mr. Kay: What did he say?

A. The flare of the smoke bomb.

Q. (Mr. Michelson): Tell me what you saw about him, or that he had on him?

A. Well, that stuff was all over him. It just seemed to settle on him.

Q. What color was it?

A. From my recollection it looked like it was orange.

Q. Did you look down the hatch?

A. Yes.

Q. Did you have any of that on you?

A. Yes, I did.

Q. What did it come from, if you know?

A. The smoke?

Q. What was it that came up and got on you?

(Deposition of Peter Corvia.)

A. The smoke from the flare

Q. The smoke from the flare? A. Yes.

Q. And was it orange colored, did you say?

A. Yes. [156]

Q. Then did you see Lubinski with his mask off after he came up?

A. Oh, yes; I helped take it off.

Q. On what part of him was that orange colored stuff? A. It was all over him.

Q. Do you mean on his clothes or body?

A. All over his face, hair, neck, and all on top around here (indicating).

Q. Where did you have it on you?

A. Well, it settled all around me. I got a little bit myself from helping him go down there.

Q. Where was it on you?

A. I got some of it down my throat. I inhaled it. I couldn't help it.

Q. Did any of it get on your clothing?

A. Yes, some of it got on my clothing.

Q. Did Lubinski complain of any pain or anything of that kind?

A. Well, sure. It got all over his eyes and face, and he said how it started to burn; his face burned, and his eyes started to water there.

Q. How long were you with Lubinski after he came up from the forepeak?

A. It wasn't very long. I went down to see the doctor myself. I got a mouth full of that stuff myself, and I was gagging.

(Deposition of Peter Corvia.)

Q. How long did you remain with him before you went down to the doctor?

A. It wasn't long.

Q. A minute?

A. A couple of minutes, I guess. [157]

Q. A couple of minutes? A. Yes.

Q. What did you notice about the condition of his eyes?

A. Well, his face was all full of that smoke there. It looked kind of bad.

Q. What do you mean it looked bad? Say what you noticed, or what you saw.

A. Well, you could notice his eyes.

Mr. Kay: Pardon me. You say his eyes were what? Would you read that part of it to me?

(Record read)

Q. (Mr. Michelson): What was it you could notice?

A. You could notice they were all bloodshot.

Q. And what else did you notice about them?

A. Well, also his face. It started drooling down, you know, like water.

Q. Drooling down like water?

A. Like a guy is crying, and there were tears.

Q. The tears were what?

A. The tears were coming down his face?

Q. The tears were coming down his face?

A. Yes.

Q. Did you see him afterwards on the voyage?

A. Oh, yes sure.

(Deposition of Peter Corvia.)

Q. How often would you see him?

A. I would see him every day.

Q. And was he on the vessel with you until you left the vessel? A. Absolutely.

Q. And you left the vessel about October 1st?

A. Something around there.

Q. After you went down to the doctor yourself you saw him frequently the rest of the voyage, did you? A. Do you mean the doctor?

Q. No. You saw Lubinski frequently the rest of the voyage, did you? A. Oh, yes.

Q. What was the condition of his eyes during all the rest of that time you were on the vessel?

A. His eyes were pretty bad. They were always bloodshot. He always had to have a handkerchief or a piece of rag to his eyes.

Q. What was he doing with the handkerchief or rag?

A. His eyes were always wet, you know, from bloodshot and sore, I guess.

Q. Do you mean watery?

A. Watery, that is it, yes.

Q. Did you see him go to the doctor there?

A. Oh, yes.

Q. How often would he go to the doctor?

A. He started going twice every day that I know of. That was only a couple of weeks that I know of. I don't know how long it was after that.

Q. Now, do you remember an unusual occurrence that happened at Kiska on that vessel?

A. Yes.

(Deposition of Peter Corvia.)

Q. What was that occurrence?

A. Well, we had another fire.

Q. Where was that fire?

A. No. 3 lower hold. [159]

Q. What was the first you heard about that fire?

A. Well, I was in the mess room having coffee.

when the call came down.

Q. About what time of the day was that?

A. Around 10:30 or 11:00 o'clock, I guess.

Q. What was the call you heard?

A. Fire No. 3 foreward.

Q. What did you do?

A. We ran up there right away.

Q. You ran up to where?

A. Up to No. 3 hold.

Q. You mean——

A. Up to the scene of the fire.

Q. Up to the hatch? A. That is right.

Q. You weren't down in the hold, were you?

A. No, I wasn't.

Q. What was going on there when you arrived?

A. I heard somebody yelling down in the hold there, and so I ran over there and a couple of mess boys had a hose there—had the nozzle right down on this guy that was yelling.

Q. What was coming out of that hose?

A. A full pressure of water was coming out.

Q. Did you look down the hold then?

A. Yes, I looked down.

Q. What did you see?

(Deposition of Peter Corvia.)

A. I seen the boatswain down there screaming his head off.

Q. Where was the boatswain?

A. He was on the ladder coming up. [160]

Q. And when you looked down what did you see with reference to the stream of water and Lubinski?

A. Well, as soon as I heard him yell, and seen who it was—I recognized him—and I wanted to see if he was all right. He had this mask all over—it was falling off of him, you know; it was lopsided.

Q. Where was the stream of water striking him when you first looked down there?

A. Right full force on him.

Q. On what part of his body?

A. Right on his face.

Q. And what was the position of the mask with reference to his face?

A. Well, it was practically knocked off of his face.

Q. Was it still hanging on him?

A. It was hanging on him, yes.

Q. Then what did you do?

A. I told the mess boys to give me the nozzle and get behind me and just hold the weight of the hose, and I pointed the water right over on the fire.

Q. Were those mess boys able to control that hose? A. Oh, no, it was impossible.

Q. Now, what did Lubinski do?

A. When he came up on deck?

(Deposition of Peter Corvia.)

Q. I say what did he do? A. Well——

Q. He was on the ladder? A. Yes.

Q. Now, you got ahold of the nozzle of the hose, and then what did he do? [161]

A. He came up on deck.

Q. He came up on deck? A. Yes.

Q. What happened then?

A. He started blowing his top, which you can't blame the guy.

Q. What do you mean by "blowing his top"?

A. He got mad, and he wanted to know who had the hose on him.

Q. Was the master of the ship around there?

A. Oh, yes, he was.

Q. What was he doing?

A. He was screaming for more pressure on the hoses, and trying to give directions for the fire.

Q. Was he looking in the hold while you were there? A. Oh, yes, all of the time.

Q. Was he looking down there at the time the mess boys had the hose pointed down and the stream from it was hitting Mr. Lubinski?

A. I couldn't say, but I guess so, because the bridge looks right down into No. 3 hold.

Q. I am going to refer back for a minute, Mr. Corvia, to the occurrence of the smoke and the fire in the forepeak at Attu. I believe you have testified that some of this got on your body?

A. Yes.

Q. What effect did that have upon you?

(Deposition of Peter Corvia.)

A. Well, it burns you. You rub it and it burns and it stings.

Q. Was that a burning or a stinging sensation?

A. Stinging.

Q. How long did that last with you? [162]

A. Oh, I don't know. I couldn't say now how long it lasted on me.

Q. I mean was it a few minutes or a long period of time?

A. Oh, yes, it was quite a while.

Q. You inhaled some of it, I believe you said?

A. Yes, I inhaled some of it.

Q. What did the doctor tell you to do for it?

A. I went to see the doctor, and he said there was nothing to do but just to go out and get plenty of fresh air.

Q. And you got over that all right, did you?

A. Eventually, yes.

Q. What was the condition of Mr. Lubinski's eyes after the fire in the hold—that is, after he came up on deck, and from then on on the voyage?

A. I would say it was pretty bad. He was always having trouble.

Q. What do you mean by pretty bad?

A. They were always bloodshot, and watery, and he always had to have attention for them.

Mr. Michelson: That is all.

Cross Examination

Q. (Mr. Kay): Do you remember what day the fire occurred—that is, from the smoke signals?

(Deposition of Peter Corvia.)

A. No, I couldn't remember that.

Q. Do you remember what part of July that was?

A. Well, let's see. It might have been about the third week of July.

Q. And how long after that was the second fire that you testified about in No. 3 hold? [163]

A. That is pretty hard to say.

Q. Well, about how long would you say it was?

A. I guess it was a good month anyway.

Mr. Kay: What was the answer?

(Witness' answer read.)

Q. Now, you say that you were down in No. 2 hold when someone yelled "Fire," and you were there with the boatswain and a couple of other fellows. Who were the other fellows?

A. Two sailors.

Q. A. B.'s? A. All A. B.'s.

Q. By the way, how old are you? A. 30.

Q. 30? A. Yes.

Q. You said you had been going to sea for twenty years?

Mr. Michelson: No, he didn't say twenty years. He said twelve years, counsel.

Q. (Mr. Kay): Did you?

A. Twelve years.

Mr. Kay: I am sorry.

Q. Now, these other fellows you referred to—were there two or more?

A. There was the boatswain, and three A. B.'s

(Deposition of Peter Corvia.)

counting myself, and some longshoremen, but they weren't part of the crew.

Q. In other words, there were two other sailors besides yourself? A. Yes. [164]

Q. Were they A. B.'s or were they ordinary seamen, or do you know?

A. They were all A. B.'s. That ship doesn't carry ordinary seamen.

Q. Do you know their names?

A. Let's see. One was Steve Devinis, but I don't know how to spell it.

The Reporter: D-e-v-i-n-i-s?

A. I don't know how to spell it.

Q. (Mr. Kay): Something like that?

A. Yes.

Q. And who was the other fellow?

A. Another—Bud Kinney.

Q. What did you say? You said "another"—something.

A. No, I didn't say nothing. You will have to excuse me. I have a bad cold.

Q. I know you have a bad cold.

A. I said Bud Kinney.

Q. Then you said something before that.

A. No, I didn't.

Mr. Kay: All right.

Mr. Michelson: I didn't hear him say anything.

Mr. Kay: Yes, he said "another"—something.

A. I was going to probably say "another sailor".

(Deposition of Peter Corvia.)

Q. Did you and the boatswain and these two sailors all go up to the forepeak then?

A. We did, yes.

Q. How did you go up?

A. Up the ladder.

Q. Which side of the vessel did you go up? [165]

A. I went up the port side.

Q. The port side? A. Yes.

Q. And directly to the forepeak?

A. That is right.

Q. And who was there, if anybody, when you arrived?

A. Well, some longshoremen and the chief mate.

Q. Any others?

A. There were, but I can't remember who they were.

Q. Of the crew I mean?

A. I don't remember.

Q. Do you know where these smoke bombs were?

A. In the forepeak before this fire. I never even knew they had any.

Q. You didn't know until that moment when you went up there and someone said there was a fire there? A. That is right.

Q. How did you know they were smoke bombs, then?

A. You could tell by the what-you-may-call-it. I seen them used before, you know.

Q. You never had anything to do with the forepeak or that part of the ship before this fire?

A. No.

(Deposition of Peter Corvia.)

Q. Did you ever go down into that part of the ship?

A. After we left Attu I did, yes; after Attu I stood look-out watches.

Q. How long had you been on this ship before the fire happened—about two weeks?

A. Yes.

Q. You had no occasion prior to the fire to go down there? [166]

A. No.

Q. After the fire did you look down and see where these smoke bombs were stowed?

A. I didn't go down there at all after the fire.

Q. Did you look down?

A. Oh, sure, you could see the smoke come up.

Q. After the smoke cleared did you look down?

A. I wasn't there after the smoke cleared.

Q. So you don't know where these bombs were stowed in the forepeak?

A. No.

Q. Could you tell from which side the smoke was apparently coming from?

A. I couldn't tell that.

Q. Which side of the hatch to the forepeak did you look down?

A. Which side of the hatch to the forepeak?

Q. Yes; did you look down into the hold when the smoke was coming out?

A. Yes.

Q. That is, into the forepeak?

A. I didn't look long; you couldn't look long that day.

Q. How big a hatch opening is it?

(Deposition of Peter Corvia.)

A. Well, I will say maybe around two by four, I guess.

Q. Did you stand directly above that opening and lean over?

A. No, I just looked down. I had to hold on to the brace of the gun mount to look over.

Q. And you stood there how long?

A. Not long. Just like that (witness snaps fingers).

Q. What did you do after that? [167]

A. I did this when the boatswain was going down, you know—after he went down.

Q. What did you do after that?

A. I got out of the way.

Q. How long was the boatswain down there?

A. Several minutes, I guess. It is hard to say.

Q. Did anyone else go down with the boatswain?

A. I don't know; I don't remember.

Q. Did anyone else come up with the boatswain?

A. I didn't see nobody.

Q. So far as you remember the boatswain was the only one who went down and came up?

A. While I was there.

Q. And how long was that, then?

A. What do you mean, how long?

Q. How long a period was that that he went down and came up?

A. I guess about several minutes.

Q. Before this fire occurred had you been up on deck near the forepeak—that is, within an hour?

A. No, not me.

(Deposition of Peter Corvia.)

Q. At that time—that is, for an hour before the fire you were down in No. 3 hold?

A. No, this was No. 2 hold.

Q. No. 2 hold? A. Yes.

Q. This Steve that you are talking about, was his name Steve Uzdadinis? See if this refreshes your memory as to his name, Steve U-z-d-a-d-i-n-i-s—does that sound like his name—Steve Uzdadinis?

A. Yes, that sounds right. It was something like that.

Q. By the way, what were you and Steve Uzdadinis and the boatswain doing in this hold before the fire?

A. We were overhauling the jumbo wire.

Q. Jumbo wire? A. Yes.

Q. When did you start working on that—I mean how long before the fire would you say it was?

A. Oh, a couple of hours.

Q. A couple of hours? A. Yes.

Q. So that you, Steve, Bud Kinney and the boatswain were down there a couple of hours before the fire?

A. Yes.

Q. And you worked there all that time?

A. Yes.

Q. None of you went up to the forepeak before that and to the place where these bombs were stowed?

A. I don't know; I couldn't say if anybody went there. I don't watch everybody to see where they go.

Q. No. I mean you and Steve, for instance,

(Deposition of Peter Corvia.)

were working together there on this equipment, weren't you?

A. If I remember right somebody went up to get some tools, but I don't know who it was, though.

Q. You don't know who it was? A. No.

Q. How long before the fire was that?

A. I don't know.

Q. I mean was it an hour?

A. Oh, it would be an hour. [169]

Q. It would be at least an hour before the fire?

A. Oh, yes.

Q. Now, when this fellow went up there to get some tools, did he say where he was going?

A. No, he didn't say.

Q. Who told him to get a tool or tools?

A. If it would be anybody it would be the boatswain.

Q. Well, do you remember, or are you just guessing at it?

A. I know somebody was going to get the tools, but I don't know who told him, but it would only be a common thing that the boatswain would tell him.

Q. How long was he gone for these tools?

A. Well, it wasn't long—a few minutes, I guess.

Q. A few minutes? A. Five at the most.

Q. Five minutes at the most? A. Yes.

Q. And then he came back and you went on about this work? A. That is right.

Q. And then about an hour later someone yelled "Fire," and you all went up forward, is that right?

(Deposition of Peter Corvia.)

A. Yes, it was about that.

Q. About how long did it take you to go up to the forepeak from where you were working when someone yelled "Fire"?

A. It didn't take more than three minutes.

Q. And then you went up there and the boat-swain went down immediately, did he?

A. No, he put a mask on first.

Q. How long did that take?

A. That took about a couple of minutes or longer. [170]

Q. And then he went right down?

A. He went right down.

Q. And you said he was there about four or five minutes?

A. Well, about several minutes.

Q. About seven minutes?

A. About several minutes.

Q. Well, less than ten minutes you would say?

A. Well, I couldn't say.

Q. I mean was it half an hour?

A. Oh, no.

Q. It was somewhere between five and ten minutes?

A. It could be, I think.

Q. Did he have anything with him when he came up?

A. No.

Q. He didn't bring this bomb up with him?

A. Oh, no.

Q. Did he have his mask on when he came out of the hatch opening?

A. Sure.

Q. And you helped him take the mask off?

A. That is right.

(Deposition of Peter Corvia.)

Q. When you took the mask off you saw this smoke all over his face you say?

A. All over him, yes.

Q. And that area that the mask was on also had smoke on it? A. Yes, sure.

Q. Well, did the smoke lay on his face?

A. You know, it just clings to you.

Q. Well, was it wet? A. Sure, it was wet.

Q. Wet smoke, is that so?

A. No. Right where his mask was it was all damp.

Q. Smoke ordinarily doesn't lay on anything, does it?

A. Smoke don't? Well, this smoke does.

Q. It does? A. Yes.

Q. Was it kind of sticky?

A. Well, the wet I guess was from the tears from his eyes.

Q. Did you see some sticky substance on his face? A. No.

Q. You just saw the smoke laying on there?

A. Yes.

Q. An orange smoke? A. Yes.

Q. How long did it lay on his face after he took the mask off? A. I don't know.

Q. You were there, weren't you?

A. Yes. I was only there for about a couple of minutes after he came up.

Q. Then you helped him take the mask off?

A. That is right.

Q. You saw this smoke hanging on his face?

(Deposition of Peter Corvia.)

A. That is right.

Q. How long did it stay on his face?

A. I don't know.

Q. How long did you watch it?

A. I was only there for about a minute or two, and then I went down to the doctor.

Q. During the minute or two you were there the smoke didn't leave his face? [172]

A. We went to the side to get some air.

Q. Did the smoke come off his face by that time? A. No, it couldn't.

Q. It just stuck there?

A. That stuff, you have to brush it off.

Q. Had the smoke stopped coming out of the hatch when Lubinski came up? A. No.

Q. It was still coming out?

A. That is right.

Q. When you took this mask off Lukinski's face what did he say, if anything?

A. He was more gagging than anything.

Q. Did he say anything?

A. He didn't say much. He was gagging.

Q. What did he say?

A. He said, "It's a bastard down there."

Q. Did he complain about his eyes?

A. We ran him over to the side there, and he said, "Christ, my eyes burn like a bastard."

Q. After you rushed him over to the side what did you do?

A. I started spitting out what I had in my throat.

(Deposition of Peter Corvia.)

Q. Then you left? A. That is right.

Q. What doctor did you see?

A. The ship's doctor—the army doctor.

Q. Do you know his name?

A. I did know his name.

Q. Where did you see him?

A. I went down to the dispensary that they have on the ship. [173]

Q. And this doctor was there?

A. That is right.

Q. Did Lubinski go down there with you?

A. He didn't go down with me, no.

Q. While you were there were any other men being treated or examined by the doctor?

A. No, I believe I was the first one there.

Q. Have you given a statement concerning this occurrence to anybody—a written statement?

A. Not me, no.

Q. Have you talked over your testimony before you came here today? A. Not me, no.

Q. Did you discuss this case with Mr. Lubinski's attorney, Mr. Levinson?

A. I don't even know who the man is.

Q. Did you discuss this case with Mr. Michelson before your testimony was given this morning?

A. This morning?

Q. Yes. A. No.

Mr. Michelson: He means did you discuss it with me before?

Mr. Kay: He knows what I mean.

(Deposition of Peter Corvia.)

Mr. Michelson: You said "this morning," and he said "No."

Mr. Kay: Yes.

Q. You understand my question, don't you?

A. You said "this morning," didn't you?

Q. Yes. This morning before you testified, and before you [174] were put under oath, did you discuss your testimony, and the facts of this case that you know about, with Mr. Michelson?

Mr. Michelson: At any time you mean?

Mr. Kay: At any time before this occasion.

A. Yes, I did.

Q. When?

A. Oh, this was—let me see—there was a call down at the hall for me to come up to see Mr. Michelson. When the heck was that? I don't know. That was I think a little after—it was about a couple of months ago, I guess.

Q. You were here a couple of months ago?

A. That was when I first found out about the case.

Q. And did you discuss the facts of the case at that time with Mr. Michelson?

A. I just told him what I knew.

Q. And that was a couple of months ago?

A. Yes.

Q. And was that the only time you discussed this case with Mr. Michelson?

A. That is the only time I know of.

Q. And you haven't discussed it with anyone else?

A. No.

(Deposition of Peter Corvia.)

Q. Did you talk to Mr. Flavel about it?

A. Who is Flavel?

Q. Well, that is the man who is suing here.

Mr. Michelson: No, don't confuse the witness. Lubinski is the libellant.

Mr. Kay: I beg your pardon. That was the name of the vessel. Walter Lubinski I mean? [175]

A. No, I never seen him but once after that.

Q. When was it that you saw him?

A. Oh, it was long ago. I can't remember.

Q. How long after you left the vessel was it?

A. I don't know.

Q. Was it a year, or a month, or a short time afterward?

A. Yes, it was a short time before I left. I can't remember the last ship I made before I seen him.

Q. The second fire that occurred, and which you say was in No. 3 hold, that was at Kiska, was it?

A. That is right.

Q. That was during the time they were invading Kiska, wasn't it?

A. That was the same day.

Q. The same day? A. Yes.

Q. And the troops who were aboard the vessel were going ashore and also taking equipment from this vessel? A. That is right.

Q. By the way, did you talk to Uzdadinis about this first fire after it happened? A. Steve?

Q. Steve. A. No, I never talked to him.

Q. You never did talk to him? A. No.

(Deposition of Peter Corvia.)

Q. Where were you when this second fire started? A. I was in the mess room.

Q. And someone yelled "Fire," and you went over to the No. 3 hold? [176]

A. They yelled "Fire in No. 3 forward," yes.

Q. And the captain you say was there?

A. He was on the bridge.

Q. Oh, he was on the bridge? A. Yes.

Q. How far is that from the No. 3 hold?

A. You can look right down into No. 3 hold.

Q. Do you know the names of these two mess boys that were holding the hose?

A. I never even knew the names of any of them on the ship.

Q. Were there any other members of the crew there at the time you arrived?

A. They were around the hatch, yes.

Q. Able seamen?

A. Let me see. There were two forward rigging up another hose; in fact looking for an extension.

Q. Two seamen? A. That is right.

Q. And who were they?

A. Well, I know the name of one of them, but I don't know the other guy's name.

Q. Well, what is the one fellow's name?

A. One fellow's name is "Smoky" or "Smoke."

Q. Who else was around there?

A. Well, you had all departments around there. The boatswain was there. Those that didn't go

(Deposition of Peter Corvia.)

down into the hatch had to stand around with the hose.

Q. About how many members of the crew were around No. 3 hold?

A. I would say at least twenty. [177]

Q. At least twenty? A. Yes.

Q. What were they all doing? You say two mess boys were handling the hose. What were the rest of the crew doing other than those two mess boys?

A. The most of them were running around in circles.

Q. Running around in circles?

A. That is right, the way I figure.

Q. And when you got there you took the hose from the mess boys? A. Yes, sure, I had to.

Q. And the other men just stood there and let the mess boys pour water on Lubinski, is that right?

A. Sure. They didn't do it intentionally. They couldn't help it.

Q. These other fellows just stood by?

A. They were just standing by waiting for these other hoses to be rigged up, you know. You have to wait so long for them to get rigged up.

Q. How many men were down in the hold at the time of the second fire when you got there?

A. Let's see. I would say about five.

Q. When you took the nozzle from the mess boys you pointed it away from the boatswain, is that right? A. I put it right on the fire.

(Deposition of Peter Corvia.)

Q. Yes. And you said the mess men weren't able to control the hose. Do you mean before you took over?

A. That is right.

Q. But you didn't have any trouble in controlling it?

A. Not with them holding the weight of it. [178]

Q. Did you have any trouble with your eyes after this first occasion when you say you got some of this smoke from the smoke bomb in your eyes or in your face?

Mr. Michelson: I don't think he said he got any in his eyes.

A. I said I inhaled mine.

Q. (Mr. Kay): But it didn't bother your eyes?

A. No, not mine.

Q. Do you know of any other fellows who had trouble with their eyes as a result of this smoke from the smoke bomb?

A. They didn't say nothing to me about it.

Q. Where did you sign on this vessel, Mr. Corvia?

A. I am trying hard to think. I think it was around the first of July.

Q. No. Where did you sign on?

A. Oh, in San Francisco.

Q. About what time was this first fire—that is, in the forepeak—what time of the day?

A. I guess it would be around 11:00 in the morning, if I remember right.

Q. About 11:00 in the morning? A. Yes.

Q. Before lunch? A. Yes.

(Deposition of Peter Corvia.)

Q. At the time this fire started was any loading being done or unloading in the No. 2 hold where you were working?

A. The longshoremen were loading and unloading the hold, and they had a little trouble with the jumbo wire—the jumbo purchase; and from then on we took over and helped to straighten it out.

Q. Where were you doing this repair work—in the hold? A. In the lower hold, yes.

Q. And just what were you doing with this jumbo wire?

A. Taking the turns out of the jumbo purchase.

Q. In addition to the regular crew of the ship there were a number of armed forces aboard that vessel at that time weren't there?

A. Well, I don't remember.

Q. You don't remember there being any members of the armed forces aboard that vessel at that time? A. What do you mean—troops?

Q. Yes. A. They got off.

Mr. Michelson: Do you mean army or navy personnel?

Mr. Kay: Army or navy.

A. Oh, yes, they had the armed guard.

Q. I mean besides the armed guard?

A. They had the army medics.

Q. Well, I mean other than army doctors weren't there some troops aboard?

A. Well, that is the army medics—the medical department.

(Deposition of Peter Corvia.)

Q. The medical corps?

A. Medical Corps.

Q. By the way, what tools did this man come back with who had gone for them?

A. Well, Stillson wrenches, spikes and some grease and a hammer.

Q. In other words, he had quite a few things with him.

Mr. Michelson: Just a minute. That is calling for a conclusion of the witness. He stated what they were. [180]

Q. (Mr. Kay): How did he bring these tools back with him? Did he carry them all by himself?

A. When you go for tools like that you usually drop them down into the hold on a line.

Q. I don't want what you usually do. What happened on this occasion?

A. The same thing.

Q. He lowered all these things down into the hold on a line, is that right?

A. Yes.

Q. And no one else went with him to get these tools?

A. No.

Q. While he was gone what were you doing?

A. We managed to take out some of the turns, you see, and we were just standing by waiting. It didn't take long before he was back.

Q. About how long would you guess?

A. About five minutes.

Q. Did the boatswain—that is, Lubinski—go down there voluntarily to see about this smoke in the forepeak?

(Deposition of Peter Corvia.)

A. To my knowledge he was sent down by the mate.

Q. Did you see the mate there?

A. Yes, sure, the mate was there.

Q. Did you see the mate there?

A. Yes, sure, the mate was there.

Q. Did the boatswain go down there just that one time while you were there?

A. While I was there, yes.

Q. And you saw no one else go down?

A. I didn't, no. [181]

Q. What was done at this forepeak when you were there other than the boatswain going down? Was there anything done in an attempt to put out the fire?

A. They were getting the fire hoses rigged up, and then fellows were trimming the ventilators.

Mr. Michelson: Which fire do you refer to?

Mr. Kay: I am talking about the smoke bomb fire.

Mr. Michelson: In the forepeak?

Mr. Kay: Yes.

Q. You say some others did go down?

A. No, I said some were stretching the hoses. They always do that.

Q. Did they put water into the forepeak?

A. No, they were all waiting for the mate.

Mr. Michelson: What was that answer?

(Witness' answer read.)

Q. (Mr. Kay): Altogether then how long were you around the forepeak?

A. Me?

(Deposition of Peter Corvia.)

Q. Yes.

A. I would say fifteen or twenty minutes.

Q. And during all of that time no water was put down there?

A. Well, they were trying to find the source of the fire.

Q. Well, just answer the question. During all of that time no water was put down there?

A. Oh, no.

Q. And during all that time you saw no one else, except Lubinski, go down there?

A. I didn't, no.

Q. You didn't see Lubinski go down other than on this one [182] occasion and come out?

A. I didn't.

Q. Did you get there at the same time that the boatswain got there—Lubinski? A. Yes.

Q. What did Bud Kinney do while this was going on? A. I can't remember.

Q. He didn't go down there?

A. I don't know.

Q. You didn't see him go down?

A. I didn't.

Q. What kind of a mask was this, if you know? Was it a regulation army gas mask?

A. Yes.

Mr. Michelson: This is at the forepeak you refer to?

Mr. Kay: Yes.

Q. I am referring to the gas mask you helped put on Lubinski's face at the forepeak?

(Deposition of Peter Corvia.)

A. It was an old army gas mask.

Q. You couldn't see anything defective about the mask, could you? A. No.

Q. When you put it on or took it off you didn't see anything defective about the mask, did you?

A. No.

Q. Nobody complained about the gas mask being defective? A. Well, I don't remember.

Q. After this fire in the forepeak did you have occasion to go down in there at any time?

A. Me? [183]

Q. Yes. A. I never went down.

Q. I mean at any time at all from that time until the time of the second fire?

A. Oh, yes, sure.

Q. How long after this first fire did you go down into the forepeak?

A. After they cleaned it out.

Q. How long would that be?

A. Oh, I would say about three days.

Q. And you didn't look down there during that time, did you, while they were cleaning it out—during this three day period?

A. While they were cleaning it out, no.

Q. You didn't go down there during that time?

A. No.

Q. When you went down there after this cleaning had been done what did you see down there?

A. Nothing.

Q. It was all clear? A. That is right.

(Deposition of Peter Corvia.)

Q. Where is the magazine locker with reference to the carpenter shop in this forepeak?

A. It is pretty close to the carpenter shop.

Q. And on which side of the vessel—port or starboard?

A. I am just trying to think. If I remember right it was right amidship of the storeroom.

Q. The magazine locker? A. Yes.

Q. And where would the carpenter shop be?

A. Well, it wasn't much of a carpenter shop. It was right next to it.

Q. On which side?

A. I can't remember now.

Q. Did you ever see one of these bombs that was stowed in the forepeak? A. Not them, no.

Q. Did you ever have occasion to see Lubinski again after you went to the doctor—that is, on that same day?

A. Yes, I seen him later on in the day.

Q. How long after this affair?

A. After lunch.

Q. About an hour or so after the fire?

A. About two hours after.

Q. About two hours afterward? A. Yes.

Q. At that time did you notice the condition of his eyes? A. Yes, I did.

Q. What did you notice?

A. They were pretty bad. They were bloodshot.

Q. They were bloodshot? A. Yes.

Q. Swollen, were they?

A. I didn't notice them swollen.

(Deposition of Peter Corvia.)

Q. Were they watery?

A. Watery and bloodshot.

Q. And was he using his handkerchief at that time?

A. I think the doctor gave him some stuff there on a cloth or rags or something.

Q. And did he have that? [185]

A. Yes.

Q. And was he putting it on his eyes?

A. Yes, he was taking care of himself.

Q. And was he complaining about it at that time——

A. He said it burned.

Q. (Continuing): ——the condition of his eyes?

A. He said his eyes were burning.

Q. Did he turn to at that time, or was he on the job—that is, when you saw him a couple of hours after this accident?

A. Oh, he was sitting down in the hatch.

Q. He wasn't working at that time?

A. Not at that time.

Q. Did he work that day after that?

A. I don't remember. I don't remember if any of us did.

Q. Did you ever notice any swelling of his eyelids? A. No, I never did.

Q. Did he talk to you about the condition of his eyes after the first day?

A. He didn't talk to me.

Q. He never complained to you about his eyes?

A. That day?

(Deposition of Peter Corvia.)

Q. No; after that day? A. Oh, yes.

Q. What would he complain about?

A. Well, they kept burning him.

Q. Did you notice his eyes being bloodshot continuously after that time? A. Oh, yes.

Q. And watering all of the time? [186]

A. I don't know about watering all of the time, but they were bloodshot most of the time.

Q. Did he say anything else about his eyes?

A. He said they hurt like hell all of the time.

Q. After this second fire did the condition of his eyes change?

A. They were still bloodshot as far as I know.

Q. They were just the same as before?

A. Yes.

Q. And when you left the vessel in October, or about then, did you notice the condition of Lubinski's eyes? A. They were the same way.

Q. Where was the vessel at that time?

A. Seattle.

Q. Did the crew pay off there?

A. That is right.

Q. And Lubinski, too? A. Yes.

Q. What side of the vessel were these mess boys on at the time you say they were playing this hose down on Lubinski?

A. They were on the starboard side at the end of No. 3 hatch.

Q. Could you see down into the hold when this smoke was coming out at the time of the second fire? A. You could see a little bit, yes.

(Deposition of Peter Corvia.)

Q. You could see a little bit? A. Yes.

Q. How far down could you see?

A. About fifteen or twenty feet.

Mr. Kay: I believe that is all. [187]

Redirect Examination

Q. (By Mr. Michelson): You say you could see down about fifteen or twenty feet into the hatch, is that correct?

A. Down to the lower hold.

Q. About fifteen or twenty feet down?

A. Yes.

Q. Where are you measuring from—up on deck?

A. Right from the hatch coaming.

Q. Where you were standing?

A. That is right.

Q. Now, you signed on the vessel in San Francisco? A. Yes.

Q. And you believe it was about the first of July? A. Yes.

Q. And then where did the vessel go from San Francisco first? A. Right straight to Attu.

Q. It went right to Attu? A. Yes.

Q. And the vessel remained there some days, did it? A. Several days.

Q. And it was during that time that the fire occurred in the forepeak? A. That is right.

Q. And there was only one fire in that forepeak at that time? A. Yes.

Q. And with reference to this fire in No. 3 hold, you were working down there with Lubinski and two other members of the crew, were you?

(Deposition of Peter Corvia.)

A. In No. 3 hold? [188]

Q. In No. 3 hold. That is where the fire took place, isn't it?

A. May I hear that question again?

Mr. Michelson: Will you read the question?

(Pending question read.)

Mr. Michelson: I am mistaken. You are correct.

Q. When you were working in No. 2 hold,—

A. Yes.

Q. (Continuing): —there were Lubinski and two other A.B.'s and some longshoremen?

A. That is right.

Q. And you were not watching the other men as to what they were doing, were you, all of the time?

A. No, I was doing my own work.

Q. How many ladders are there that go down into that No. 2 hold?

A. There is one that I know of, and possibly two; there should be.

Mr. Kay: What was that question and answer, Mr. Reporter?

(Record read.)

Q. (By Mr. Michelson): You have spoken of smoke being on yourself and being on Lubinski.

A. Yes.

Q. Now, do you mean smoke, or just what do you mean?

Mr. Kay: Well, now, Mr. Michelson, I object to that as leading and suggestive. He has testified on that.

(Deposition of Peter Corvia.)

Q. (By Mr. Michelson): Do you have trouble expressing yourself, Mr. Corvia?

A. What do you mean, do I have trouble? [189]

Q. Well, for instance, you know what smoke is, do you? A. Yes.

Q. Did you see smoke floating around you?

A. It came right up out of the storeroom.

Q. In the forepeak? A. In the forepeak.

Q. And then there was an orange substance on you? A. Yes.

Q. And you think it came from the smoke?

A. I know it did.

Q. And that was the same thing that happened to Lubinski?

A. Oh, there is no doubt about it.

Q. And did you get any of that smoke on your face? A. I got some on my face, yes.

Mr. Kay: Pardon me. What was that answer?

(Witness' answer read.)

A. Yes.

Mr. Michelson: And some on your clothing?

A. That is right.

Q. Now, after you looked down the forepeak, when the smoke was coming out of there, what did you then do?

A. I rushed to the side to get a little air, and started spitting.

Q. And did you stay there for some time?

A. Stay where?

Q. Did you stay at the rail?

A. Oh, yes, sure.

(Deposition of Peter Corvia.)

Mr. Kay: Well, "some time"——

Mr. Michelson: Wait a minute.

Mr. Kay: You said "some time." [190]

Mr. Michelson: Well, I asked him if he stayed there for some time.

Mr. Kay: Ask him how long he stayed there.

Mr. Kay: Yes, and you asked him whether he went to the rail and stayed there for some time.

Mr. Michelson: I know I did.

Q. Do you know whether or not Lubinski came up out of that hold while you were away—whether Lubinski came up out of the forepeak while you were away from the hatch leading into the forepeak?

A. When he came up, that was when I went over to get the dope, you know, and to see what was the matter.

Q. Did you stay at the entrance to the forepeak all of the time? A. Oh, no.

Q. Did you go away from there while Lubinski was down in the forepeak? A. Yes.

Q. About how long were you away from there?

A. That is pretty hard to say. Time goes by like that (witness snaps fingers), and it is pretty hard to guess or say.

Q. Was it a few minutes or some minutes?

A. A few minutes, yes.

Q. Do you know when you were away from there whether or not he did come up?

A. He couldn't have.

(Deposition of Peter Corvia.)

Q. What did Lubinski do, if anything, regarding getting this stuff off his face after he came up out of the hatch leading into the forepeak? [191]

A. He tried a couple of times to brush it off with his hand, you know, but that wasn't any good.

Mr. Michelson: That is all.

Recross Examination

Q. (Mr. Kay): Mr. Corvia, that forepeak hatch opening is about how far from the rail where you went to get some fresh air? A. Well——

Q. It is just a small distance, isn't it?

A. Yes. Where I went it was about three feet.

Q. About three feet? A. Yes.

Q. In other words, when you say you went to the rail, you didn't go far? You just took a step over to the rail? A. That is about all.

Q. And you stayed there this twenty minutes that you were around there and before you went to the doctor? I mean you stayed either at the rail or near that hatch opening there?

A. I was waiting for the boatswain to come up again.

Q. So that you actually saw during this twenty minute period that he was down there and didn't come up? I mean if he had come up you would have seen him?

A. Oh, yes, sure, I would have seen him; I seen everything.

Q. And he didn't come up during those twenty minutes? A. Yes, sure, he came up.

(Deposition of Peter Corvia.)

Q. Other than this one time when you helped him take his mask off he didn't come up other than that? A. No.

Mr. Kay: That is all. [192]

Redirect Examination

Q. (By Mr. Michelson): Then you went down to the doctor? A. I did, yes.

Mr. Michelson: That is all.

Mr. Kay: That is all.

(Deposition concluded.)

Mr. Levinson: That is the Libelant's case, your Honor.

The Court: Do you offer this deposition?

Mr. Levinson: I offer the testimony of Peter Corvia in evidence.

The Court: It is now admitted as part of the Libelant's case, and the Libelant rests. The respondents may proceed with their testimony.

Libelant rests.

Mr. Franklin: At this time, if your Honor please, we would like to read in evidence the deposition of Captain Charles N. Goodwin, taken on behalf of Respondents at Seattle, Washington, June 5, 1944.

The Court: You may do so.

CHARLES N. GOODWIN,

called as a witness on behalf of Respondents, having been duly sworn by the Notary Public, testified on behalf of Respondents by deposition as follows:

Direct Examination

Q. (By Mr. Franklin): Would you state your name, please? [193] A. Charles N. Goodwin.

Q. Where do you live, Captain?

A. Route 3, Box 2630, Renton, Washington.

Q. By whom are you employed at the present time, Captain?

A. Alaska Steamship Company.

Q. In what capacity?

A. Master of a vessel?

Q. Of what vessel?

A. The S.S. George Flavel.

Q. How long have you been master of that vessel? A. The 4th of April, 1943.

Q. You are in the process of leaving Seattle at this time to be gone indefinitely?

A. That is right.

Q. You do not know whether you will be back in Seattle at the time this matter may be set for trial?

A. I do not know.

Q. How long have you had a master's license?

A. December, 1939.

Q. How long have you followed the sea?

A. I started in 1923.

Q. Have you followed the sea continuously since then?

(Deposition of Charles N. Goodwin.)

A. Well, I was off a couple of years in between, working ashore.

Q. In general what has been the character of your service? Coastwise?

A. Mostly coastwise, the Alaska service. I have run some off shore, running to the Orient. I ran about three years to the Orient.

Q. When did you get your first mate's license?

A. It was approximately 1937.

Q. When did you get your third mate's license?

A. It was in 1929.

Q. Captain Goodwin, directing your attention to the *George Flavel*, its movements during the year 1943, I will ask you where the vessel was on approximately June 23, 1943?

A. San Francisco.

Q. What were you doing there?

A. Arriving there to load for the Army.

Q. What did you load in San Francisco?

A. Well, I would say about 75 percent of the cargo, between 75 and 80 percent, was ammunition. The rest was coal, kindling wood, and general impedimenta like rations.

Q. Any jeeps?

A. Well, very few at San Francisco at that time. There was some medical supplies.

Q. Did you as master of the vessel have anything to do with the loading of those supplies?

A. No, sir.

Q. Who loaded them?

A. That was loaded by the Army.

Deposition of Charles N. Goodwin.)

Q. Did you as master have anything to do with designating the cargo you took?

A. Not a thing.

Q. Who designated that?

A. As far as I know the Army did.

Q. Did your cargo include any landing barges?

A. Yes, sir.

Q. Where were they stowed?

A. On deck. [195]

Q. Captain Goodwin, did you carry any troops on board? A. I did.

Q. A substantial number? A. Yes, sir.

Q. Did you know at the time where you were destined? A. Not definitely.

Q. Later you ascertained that you were to be part of the Kiska invasion?

A. Well, yes. I didn't know at that time where I was going.

Q. Were gas masks issued to the members of the crew? A. Yes, sir.

Q. By whom?

A. As far as I know, the Army, in San Francisco.

Q. Captain Goodwin, where did you first stop after leaving San Francisco? A. Adak.

Q. Between San Francisco and Adak did you authorize the placing of any of the landing gear in any particular part of the vessel?

A. Yes, sir.

Q. Would you state how that came about?

A. Well, they had a lot of extra equipment put

(Deposition of Charles N. Goodwin.)

aboard, so I took those boats, which is a very valuable item when you need it—at that time they were on deck, the extra equipment, and every man had access to it, and the amphibious force commander, an Ensign, asked the mate if there was a place he could stow it. The mate came and asked me and I said I didn't know why we couldn't put it in the forepeak, it looked as good [196] as any place to me. I didn't figure on doing anything that was dangerous.

Q. Why did you think the forepeak would be the safest part of the ship to stow any of this invasion cargo?

A. The only ones that had access to it was our crew, and if we stowed it down in the holds they might be down there looking for something else, the Army, when they were looking for different items. And it was handy to get at in case you needed it in a hurry, and you want it in a place so if you need something you can get it in a hurry.

Q. After you gave the permission to stow the invasion equipment in the forepeak did you know of your own knowledge who had access to that forepeak?

A. The Ensign in charge of the amphibious force could go down there, and our deck crew had access to it. We had the keys to it.

Q. Then it would be the amphibious force and your deck crew that would have access to it?

A. That is right.

(Deposition of Charles N. Goodwin.)

Q. How many men were members of the amphibious force?

Mr. Levinson: He didn't say that. He said just the Ensign of the amphibious force had access to it.

The Witness: Yes.

Q. And the Ensign could permit the members of the amphibious force to work there if necessary?

A. That is right.

Q. How many members of the amphibious force were on the vessel at the time, approximately?

A. 27, I believe. [197]

Q. You yourself never visited the forepeak after this cargo was stowed there?

A. No, I did not.

Q. Were you present at the time the smoke bomb plug became loosened, at Kiska?

A. No, sir.

Q. Where were you?

A. I was on the Greenup, visiting the master of the Greenup.

Q. When you returned to the vessel had the distress signal been removed? A. Yes, sir.

Q. You visited the forepeak at that time?

A. Yes, sir.

Q. Captain Goodwin, do you remember the morning of the Kiska invasion?

A. Yes, sir; very well I do.

Q. That was when?

A. That was the 15th day of August, 1943.

(Deposition of Charles N. Goodwin.)

Q. Where was the Flavel lying at that time with reference to the beachhead?

A. It was anchored off about three-quarters of a mile the west side of Kiska Island, a place called Quizling Cove.

Q. Before reaching Kiska had you made any stop?

A. From the time we left to go on this invasion?

Q. Yes.

A. No. We left Adak and went right out.

Q. Did you stop at Adak?

A. That was our leaving point for Kiska. That is where the assembly was. [198]

Q. Did you discharge any men at Adak?

A. From Attu?

Q. Yes.

A. I made several trips in between. I went to Nome, St. Paul Island and Adak. We had practice Maneuvers. We were taking them on and discharging them all the time, practicing.

Q. Were you also taking on and discharging cargo after reaching Alaska? A. Yes.

Q. Who was in charge at that time of designating what cargo would be loaded and where it would be stowed? A. The Army.

Q. Was it your duty as Master solely to navigate the vessel on this voyage according to directions issued you by the Navy?

Mr. Levinson: I object to the question as leading.

Deposition of Charles N. Goodwin.)

Q. What were your duties with reference to the George Flavel on this voyage?

A. My duties were to see that she got from one port to another. I am in charge of the navigation of the ship and the safety of the ship.

Q. On this particular voyage did you have anything to do with the loading, unloading or stowing of any of the cargo aboard the vessel?

A. No, sir.

Q. Captain Goodwin, after reaching Kiska when did the troops begin to leave your vessel?

A. Approximately 5:00 a.m. in the morning. That is, for the first wave. We started immediately on anchoring, [199] which must have been around 2:30 or 3:00 in the morning. That is, we put the landing barges in the water, except two. We kept two at our ship, and sent them to the master ship where the invasion started. Our two were loaded. We put about fifty men in each one of them and on the track. That was our initial quota on the first wave.

Q. You had been up all night the night before?

A. Yes, sir.

Q. Did you go to bed?

A. I waited until they made the landing at 6:00 'clock, and I stayed up until approximately 8:15, and we didn't hear any firing from the beach, and they were making a landing, and we figured there was nothing serious, so I said I thought I would take a nap, and went to bed.

Q. What awakened you?

(Deposition of Charles N. Goodwin.)

A. The second mate came running aft, hollering, and told me there was a fire in No. 2 hold.

Q. What did you do?

A. I jumped up and immediately went up on the bridge. By the time I got there the alarm had been sounded. I sounded it again, the general alarm. We had hoses running to the hatch, and the water was started. I also signalled to the commodore to get as many landing barges alongside as possible, and to try to get a destroyer alongside so I could get the men out.

Q. What were you apprehensive about?

A. I was apprehensive because at the time I didn't know exactly what type of cargo I had in the hold, whether it was loaded completely with ammunition or not. I knew there was some down there, and I had the men immediately [200] find out how much ammunition was down there, and what the contents of that particular hold were.

Q. Did you at any time order the boatswain, Mr. Lubinski, to go down and fight the fire in the hold?

A. No, sir, I didn't order any man specifically. I gave my orders to the chief officer and told him to get somebody down there, but there was no man designated.

Q. Do you know what caused that fire in No. 3 hatch? A. Yes.

Q. State what it was.

Mr. Levinson: You know only what somebody told you.

(Deposition of Charles N. Goodwin.)

Q. Did you make an investigation?

A. I was down in the hold myself before the fire was completely out.

Q. What caused the fire?

Mr. Levinson: Do you know what caused it?

The Witness: Yes.

Mr. Levinson: Did you see it or did somebody tell you. You know we have a hearsay rule that you cannot testify to what somebody told you.

Q. My question is, Captain; you were down in the hold yourself?

A. I was down there myself.

Q. Did you see Mr. Lubinski down there?

A. I did not.

Q. Captain Goodwin, did you make an investigation, as master of the vessel, to determine what caused the fire? A. I did.

Q. What did that investigation reveal?

Mr. Levinson: I make the same objection. It was [201] not an official investigation.

The Court: The objection is overruled.

A. It was caused by a soldier starting a jeep, and it backfired and caught on fire.

Mr. Levinson: I move to strike the answer.

The Court: The motion is denied.

Q. How long did it take to put the fire out?

A. Roughly, I would say 45 minutes.

Q. Did you subsequently locate where the fire was burning?

A. Yes, sir. I was down there before the fire was completely out in the jeep, myself.

(Deposition of Charles N. Goodwin.)

Q. Describe the condition of the jeep, that you observed.

Q. When I got there it was practically burned up, and what had caused the smoke, the real smoke, was a couple of sleeping bags that had been put in it, and a couple of knapsacks, and they were burned completely up. It was still burning when I was down in the hold. The wiring on it was still burning when I got there. The third mate was the man that put the fire out in the jeep, himself. I was standing right there when he had the hose and finished it.

Q. What part of No. 3 hold was it?

A. It was on the port side, in the after part of the hatch, back underneath the bulkhead.

Q. Down in the lower hold? A. Yes, sir.

Q. State whether or not that hold was being discharged at the time the fire began?

A. Well, it had been being discharged, and I cannot say exactly at the time whether they were working in that [202] hold. You see, the way these things work, they have different items in different holds, and they may come out and say "We want this", and that may be in No. 2, and they will get it out of No. 2.

Q. Who would give those orders?

A. The Army. Someone on the beach would say what they wanted and they would notify our ship. They would send out a boat and notify us that maybe they want a jeep out of No. 3 hold, or maybe they would want a load of ammunition out of No. 2 hold, a type of ammunition. It might be in No.

(Deposition of Charles N. Goodwin.)

2 or No. 5. They designate that and you shift back and forth with the operation, just whatever they want or need at that moment.

Mr. Franklin: That is all. Thank you.

Cross Examination

By Mr. Levinson:

Q. You are with the Alaska Steamship Company now? A. Yes.

Q. Have you worked for them before?

A. Yes, sir.

Q. On what ships?

A. On the Yukon, the Alaska, the Depere, the Bering, the Cordova, and the Baranof.

Q. Your service has been substantially with the Alaska Steamship Company since you have been in active service? A. The majority of it, yes.

Q. And that was true prior to the war?

A. Yes.

Q. In other words, the fact that this is a Liberty ship, [203] operated by the Alaska Steamship Company, you still consider yourself an employe of the Alaska Steamship Company?

A. That is right.

Q. You loaded your cargo for the initial voyage at San Francisco on June 23, 1943?

A. That was part of the initial loading.

Q. Well, the Army indicates the cargo to be placed aboard? A. That is right.

Q. What do the mates do in connection with that process?

(Deposition of Charles N. Goodwin.)

A. The mates have very little to say about it. At that particular time we were in the process of what they call invasion loading, and they put their own men aboard to load. They had two men travel with us the whole time. They were called T. Q. M., a kind of a quartermasters corps, and these two officers—there were two lieutenants in charge. They designated it. They all worked with the mate, but they had practically all to say where the cargo was going, because they knew just exactly how they wanted it in there.

Q. But the mate participated in that with relation to his usual duties as mate, as to when the cargo should come out and how it should be stowed with reference to the safety of the ship, and things of that nature. In other words, these men were along to indicate the priority of the cargo, and how they wanted it, and its availability, and your own mate was along to see that it was stowed in accordance with the usual ship's procedure and practice, for safety of the ship and the crew?

A. Oh, yes. [204]

Q. That is the usual method, isn't it?

A. That is all taken care of through the stevedores ashore, to handle the loading.

Q. With reference to the gas masks; they are supplied by the Army?

A. As far as I know, they were supplied by the Army.

Q. And it is part of the regular ship's equip-

(Deposition of Charles N. Goodwin.)

ment, isn't it? Don't you carry gas masks as part of the ship's equipment?

A. Yes. The law requires you to carry so many. But that is a special mask.

Q. It is a substitute for the type of gas mask required by law?

A. As far as I know, any ship that is connected with any invasion or anything like that, it is issued to us by the Army.

Q. Did you have any other gas masks on the ship at that time?

A. We had the regular, what the Steamboat Inspection Service calls for.

Q. You had those aboard the ship?

A. Yes.

Q. Do they differ any from those issued by the Army?

A. Yes. These are a different type. They are bigger masks.

Q. Those Army masks?

A. No; those required by the law.

Q. Have you any knowledge as to their comparative efficiency?

A. No, I have not: I never tried to use them. I have tried out the ones we have on the ship.

Q. These additional supplies which you had on deck, you say the mate came to you with a request that he wanted those placed some place where where it would be safe? A. That is right.

Q. You indicated the forepeak because of the

(Deposition of Charles N. Goodwin.)

fact of its location, and it was available to the members of the crew? A. That is right.

Q. The members of the crew working on the ship, the deck crew, have access to the forepeak and use it quite a good deal to get their gear out, don't they? A. That is right.

Q. And a great part of their gear is in the forepeak? A. That is right.

Q. And they are expected to go in and out and get the gear that may be necessary?

A. Yes, sir.

Q. Who is the person in charge of the stowage of the material in the forepeak in that event; which mate? A. The first mate.

Q. It is his job to see that whatever is in the forepeak is made accessible to the men, and also that it is stowed in such a way that the men are protected from a safety standpoint?

A. That is right.

Q. Do you happen to know the nature of the equipment that was placed in the forepeak?

A. Oh, it was some wrenches, some spark plugs, wheels—different little items.

Q. That is the usual gear in the forepeak, isn't it? A. No.

Q. In addition to the regular loading gear?

A. You mean this extra amphibious gear?

Q. Yes.

A. That is what it was. It was wrenches for working on their engines and propellers.

(Deposition of Charles N. Goodwin.)

Q. How about the smoke bombs?

A. I didn't even know the smoke bombs were aboard the ship. I didn't know they were aboard the ship at the time.

Q. The forepeak of a new ship like the Flavel; and with new equipment, is usually pretty full?

A. No. Ours was not so full. We had lots of space up there.

Q. It was a large forepeak?

A. A large forepeak.

Q. Those things are always stowed, of course, so it is accessible to the men who want to go in and get it?

A. That is right. We have other lockers on there, too, besides the forepeak, where we can store gear.

Q. Anyway, it is the first mate who is responsible for the condition of the stowage in the forepeak?

A. That is right. He orders the boatswain or whoever is around running the gang. The mate tells him to put it away, and put it in ship-shape. He expects them to do it.

Q. And then he inspects it? A. Yes.

Q. It is customary, is it not, when they need any gear, for the boatswain or whoever calls for the gear to send a man into the forepeak to obtain it?

A. That is right.

Q. That is the usual procedure? A. Yes.

Q. In your reloading, we may say, at Attu—you took on [207] some more cargo at Attu?

(Deposition of Charles N. Goodwin.)

A. We discharged some and took on some.

Q. What part does the mate play in that?

Mr. Franklin: Did he play any part in that?

Q. Or did he play any part in that?

A. He conferred with the Army officials as to what there was to load, and where they wanted it discharged. You might as well say they worked as a team, together.

Q. They stowed it according to his judgment?

A. Yes.

Q. But at any landing the same thing is true, you are responsible for the safety of the ship and the safety of the crew? A. Yes.

Q. When you say you are in complete charge of the ship to navigate it where you may be directed, you are in complete charge of the vessel as far as the navigation and operation of the vessel is concerned?

Mr. Franklin: The operation of the vessel?

Mr. Levinson: That is right.

Mr. Franklin: Not in an invasion.

Mr. Levinson: I mean he follows orders as to where it shall go.

Mr. Franklin: Yes.

Q. That is right, isn't it?

A. We are getting ahead of the story. We were out at Attu; we were not on an invasion at that time. At that time, yes, I was in complete charge of the vessel. As far as I was given my orders where they wanted me to go, I took the ship there, where they told me, to. [208]

(Deposition of Charles N. Goodwin.)

Q. Up to that point, where you took the ship where they told you to take it, you were primarily responsible for the ship and the crew?

A. That is right.

Q. Which includes the stowage of the ship's gear and whatever may be on the ship, with reference to the crew's safety?

A. Well, I am responsible, yes. I will grant anybody that. But it is up to the officers, my officers, to see that that is done.

Q. This fire that occurred at Kiska, a destroyer did come alongside, didn't it?

A. That is right.

Q. And I believe you had a hose over from the destroyer?

A. We did.

Q. Who were handling the various hoses; do you recall?

A. Now, that is a pretty hard question, because there was so much excitement going on there, and there was so much involved that a man just cannot sit right down and remember exactly who had the hoses. I do distinctly remember there was a couple of colored boys. I remember them having one of the hoses. I know the third mate did, either the third mate or the second mate. I believe the third mate had one for a while, and he went down in the hold.

Q. The hose that was being handled by the colored boys, was that the ship's hose?

A. That was the ship's hose.

(Deposition of Charles N. Goodwin.)

Q. You did not watch them, you do not know how they were swinging it around? [209]

A. Oh, yes, I saw them. There wasn't very much swinging around. The hoses were down, and if they had them too far down we pulled them up to the top.

Q. You, of course, did not order any of the men below? A. I didn't designate any man.

Q. It is the mate's job to do that?

A. I told the chief officer to get somebody, and did not designate a man; to get somebody to get them down there.

Q. Do you know whether or not Lubinski went down, that is, the boatswain?

A. I don't know. Personally, I don't think he did.

Q. Of course, you don't know?

A. I am almost positive.

Q. That is because of your knowledge of Lubinski, is that it?

A. No. Just the idea I have in mind of the men who went down there, and I don't ever remember seeing him down there. I know the men that went down there.

Q. Some of the men? A. Yes.

Q. You do not know all of the men, of course?

A. I know the men that went down there, and I don't remember seeing him down there.

Q. At least if he and the mate say that he went down there you do not have any sufficient knowledge to say that is not correct?

(Deposition of Charles N. Goodwin.)

Mr. Franklin: That is objected to as argumentative.

Mr. Levinson: Let us find out.

The Court: It is cross examination, and that is proper, in my opinion. [210]

A. I will stick to my story that he didn't go down there.

Q. You didn't see him down there?

A. No.

Q. There was a lot of smoke around?

A. There was a lot of smoke around, yes.

Q. How many men of the ship's crew were down there?

A. I only saw one man that went down to the bottom of the hold when the smoke was bad.

Q. Who was that?

A. A sailor they called "Whitey." I don't know his name.

Q. When you went down there had someone been down there, when you and the third mate went down there?

A. This "Whitey" had been down there. He and the third mate were down there when I got down there, and after the fire was out who came down there to see it I don't remember now, because as long as the fire was out and I knew the ship was safe then I had too many other things to do.

Q. Where was the boatswain at the time of the fire?

A. He was around the hatch, as far as I know. I think he helped swing in some lifeboats. I had

(Deposition of Charles N. Goodwin.)

all the boats over the side and I had to swing them in to get the destroyer alongside. The boatswain was around the hatch, I know that.

Q. He was active in carrying out whatever duties may have been given to him?

A. Yes, that is true.

Mr. Levinson: I think that is all. [211]

Redirect Examination

By Mr. Franklin:

Q. One more question. Were any of the members of the amphibious force fighting the fire with hoses?

A. No. The amphibious force was ashore with their boats at the time.

Q. The Navy was helping?

A. The armed guard personnel was helping. In fact, every man on the ship was involved; they were there doing something.

Q. Did you see any of the U. S. Navy armed guard handling the hoses?

A. They helped drag some hose aft up to the hold, I know, because I sent for them to bring the hose aft so we could run a line from one of the other hydrants. I sent them back to bring the hose up forward so we could hook up another hydrant and get as much water in there as possible.

Q. Do you know whether they were manipulating any of the hose?

A. I couldn't say. I really don't know.

Q. How long were you down in the hold at the Kiska fire?

(Deposition of Charles N. Goodwin.)

A. I was down there about ten minutes, I should say. When I got down there it was practically out. It was just the last of it. The third mate was there.

Q. Did your voyage terminate about September 28, 1943? A. That is right.

Q. At any time on that voyage did the boat-swain, Mr. Lubinski, make any complaint to you, personally, that his eyes had been affected either by the fumes from the distress signals [212] at Attu, or from the smoke of the Kiska fire?

A. He never made any complaint about it, that the smoke caused his eye trouble. He had trouble with his eyes and I sent him to the doctor at Adak. He never said what it was caused from.

Mr. Franklin: That is all.

Mr. Levinson: That is all.

Q. (By Mr. Franklin): Captain Goodwin, do you waive the reading and signing of your deposition.

A. Yes.

Mr. Franklin: And do you waive it, Mr. Levinson?

Mr. Levinson: Yes.

(Deposition concluded.)

Mr. Franklin: We offer this deposition of Captain Chas. N. Goodwin in evidence, your Honor.

The Court: It will be received in evidence as part of the Respondents' case.

Mr. Franklin: We will next call Mr. V. W. Killingsworth.

V. W. KILLINGSWORTH,

called as a witness on behalf of Respondents, being first duly sworn, testified as follows:

Direct Examination

By Mr. Franklin:

Q. Will you state your name, please?

A. V. W. Killingsworth.

Q. Where do you live?

A. In Seattle, Washington.

Q. By whom are you employed at the present time? [213]

A. By the Alaska Steamship Company.

Q. In what capacity?

A. Executive assistant.

Q. To whom?

A. To the vice-president and general manager, Mr. Baker:

Q. How long have you been in the employ of the Alaska Steamship Company?

A. Since March, 1936.

Q. Is the Alaska Steamship Company still operating any vessels, or a fleet of vessels?

A. No, sir; not as a steamship operator.

Q. When did it cease?

A. During May and June, in 1942.

Q. What happened to its then fleet of vessels?

A. They were requisitioned by the United States War Shipping Administration.

Q. What has been the character of the work of the Alaska Steamship Company since the requisitioning?

(Testimony of V. W. Killingsworth.)

tioning of its fleet by the United States Government?

A. Since that time they have acted solely as general agent for the War Shipping Administration, under a service agreement.

Q. State whether or not a written general agency agreement was entered into between the Alaska Steamship Company and the War Shipping Administration of the United States?

A. Such an agreement was entered into.

Q. Have you the original in your possession?

A. Yes, sir.

Q. Do you know the date of the execution of that agreement?

A. It is dated March 9, 1942. [214]

Mr. Franklin: If the Court please, Mr. Killingsworth has in his possession the original general agency agreement which the Alaska Steamship Company is required at all times to have available in its dealings with the United States Government, and it has been stipulated by proctor for the Libelant that a copy of that agreement may be offered in evidence in lieu of the original, and we therefore at this time ask that this copy of the general agency agreement of March 9, 1942, be marked for identification.

(Copy of General Agency Agreement dated March 9, 1942, marked for identification as Respondents' Exhibit A-3.)

The Court: Mr. Killingsworth, do you know whether or not this is one of the carbon copies origi-

(Testimony of V. W. Killingsworth.)

nally made at the time the original was drawn up and entered into?

The Witness: No, sir; it is not.

The Court: It is a copy made later, at leisure?

The Witness: Yes, sir.

Q. (Mr. Franklin): Have you compared that Respondents' Exhibit A-3 for identification with the original to ascertain that it is a true and correct copy of the original?

A. Yes, sir.

Q. What did that comparison show?

A. I know it is a copy of the general agency agreement, Form G.A. 4-442, as it is commonly known in the trade.

Q. What number, if you recall, does the original general agency agreement bear?

A. It is contract No. W.S.A. 355. [215]

Q. Is that a number assigned exclusively to the Alaska Steamship Company?

A. That is correct.

Q. Has any other subsequent general agency agreement been entered into, other than the one you have referred to as of March 9, 1942?

A. No. That is the general agency agreement.

Mr. Franklin: At this time, if the Court please, we offer what has been marked Respondents' Exhibit A-3 in evidence.

Mr. Levinson: I have no objection to the fact that it is a copy, your Honor. I have no objection to the exhibit whatever, although I expect to challenge its application.

(Testimony of V. W. Killingsworth.)

The Court: It is admitted in evidence.

(Copy of General Agency Agreement dated March 9, 1942, received in evidence as Respondents' Exhibit A-3.)

Q. (By Mr. Franklin): Mr. Killingsworth, would you advise the Court how vessels were allocated to the Alaska Steamship Company following the execution of that agreement?

A. As a vessel is nearing completion in the shipyard the allocation committee of the War Shipping Administration determined to which general agency the vessel would be assigned, and upon that determination a letter was written to the General Agent advising the General Agent of the assignment of the ship, and under what conditions.

Q. Directing your attention specifically to the Steamship "George Flavel," did you receive any letter of allocation of that vessel to the Alaska Steamship Company, as General [216] Agent, from the War Shipping Administration? A. Yes.

Q. Have you an allocation letter in your possession sent by the War Shipping Administration?

A. Yes, sir.

Q. What is the date of that letter?

A. The date is March 8, 1943.

Mr. Franklin: And here, again, if the Court please, it has been stipulated that a copy may be substituted. I will ask to have that copy marked for identification.

(Copy of letter dated March 8, 1943, U. S.

(Testimony of V. W. Killingsworth.)

War Shipping Administration to Alaska Steamship Company, marked for identification as Respondents' Exhibit A-4.)

Q. (By Mr. Franklin): Hand you what has been marked for identification as Respondents' Exhibit A-4, I will ask you if you know what that is?

A. This is a copy of the letter from the Managing Charters and Agency Section, Division of Operations, of the War Shipping Administration, in Washington.

Q. Under what date?

A. Dated March 8, 1943.

Q. With reference to what vessel?

A. The SS "George Flavel."

Q. Have you examined and compared Respondents' Exhibit A-4 for identification with the original to ascertain whether it is a true and correct copy of the original? A. I have.

Q. What did you find?

A. I found that it is a true and correct copy.

Q. Is it necessary in the operation of the Alaska Steamship [217] Company as general agent that the allocation letter be retained and be at all times available? A. That is right.

Mr. Franklin: With the consent of counsel, your Honor, we will ask that Respondents' Exhibit for identification A-4 be received in evidence as Respondents' Exhibit A-4.

Mr. Levinson: I have no objection.

The Court: It may be admitted.

(Testimony of V. W. Killingsworth.)

(Copy of letter dated March 8, 1943, U. S. War Shipping Administration to Alaska Steamship Company admitted in evidence as Respondents' Exhibit A-4.)

RESPONDENTS' EXHIBIT No. A-4

(Copy)

War Shipping Administration
Washington

March 8, 1943

Alaska Steamship Company
Pier 1
Seattle, Washington

Gentlemen:

SS George Flavel Mee No. 1617

The above vessel has been allocated to your company under service agreement, form GAA (Contract WSA 355) dated March 9, 1942 for service as directed by the War Shipping Administration.

This vessel is expected to be ready for delivery by Oregon Shipbuilding Corporation at Portland, Oregon on April 12, 1943. It is requested that you contact our Pacific Coast Director, Mr. A. R. Lintner at San Francisco and arrange to take delivery under service agreement when the vessel is ready.

Marine P and I insurance satisfactory to our Division of Insurance should be placed by your company with commercial underwriters, effective as of the time that the first member of the vessel personnel is placed aboard. Please forward insur-

(Testimony of V. W. Killingsworth.)

ance policy for approval to our Division of Insurance.

You will be advised in due course regarding the placing of certain personnel aboard the vessel prior to delivery.

Very truly yours,

G. A. DUNDON,

Manager, Charters and Agencies Section Division
of Operations

(Respondents' Exhibit A-4 read.)

Q. (By Mr. Franklin): Mr. Killingsworth, was there any subsequent allocation letter issued referable to the SS "George Flavel," following the letter that was just read?

A. Yes; there was.

Q. Under what date?

A. Under date of April 8, 1943.

Q. Have you the original letter in your possession? A. I have.

Mr. Franklin: I will ask that it be marked for identification.

(Letter dated April 8, 1943, Chief of Allocation Assignments at San Francisco to Alaska Steamship Company marked for identification Respondents' Exhibit A-5.)

The Court: By what term do you refer to this later communication? [218]

Mr. Franklin: The allocation letter.

(Testimony of V. W. Killingsworth.)

The Court: A supplemental one?

Mr. Franklin: A subsequent one, yes.

Q. (Mr. Franklin): I hand you an exhibit which has been marked for identification as Respondents' Exhibit A-5, and ask you if you know what that is?

A. That is a true and correct copy of the letter of April 8, 1943, from the Chief of Allocation Assignments at San Francisco, concerning the employment of the vessel.

Q. What vessel?

A. The SS "George Flavel."

Q. Have you compared that exhibit with the original letter? A. I have.

Q. With what result?

A. That I find it is a true and correct copy of the original letter.

Q. Is it necessary that the Alaska Steamship Company retain the original supplemental letter of allocation of this vessel? A. It is.

Mr. Franklin: At this time, if the Court please, we offer what has been marked Respondents' Exhibit A-5 for identification in evidence.

Mr. Levinson: No objection.

The Court: It may be admitted in evidence.

(Letter dated April 8, 1943, Chief of Allocation Assignments at San Francisco to Alaska Steamship Company admitted in evidence as Respondents' Exhibit A-5.)

(Testimony of V. W. Killingsworth.)

RESPONDENTS' EXHIBIT A-5

(Copy)

War Shipping Administration
200 Bush Street
San Francisco, California

April 8, 1943

Alaska Steamship Co.

Pier 2

Seattle, Washington

Gentlemen:

Subject: SS. George Flavel

The above vessel, allocated to you for operation under Service Agreement Form GAA, is expected ready for delivery at Portland immediately.

This vessel has been assigned to operation in the Alaska pool under direction of Mr. W. E. Brown, Assistant Pacific Coast Director, War Shipping Administration, Seattle, Washington, and it is requested that you contact Mr. Brown for further instructions.

Yours very truly,

/s/ H. N. MIDDLETON

Chief, Allocations and Assignments

cc—Mr. Keating, WSA, Washington, D. C.

Mr. Darr, WSA, Washington, D. C.

Mr. Brown, WSA, Seattle, Washington

Mr. Powell, WSA, Portland, Oregon

Mr. Pattern, WSA, San Francisco

Grace Line, Portland, Oregon

(Testimony of V. W. Killingsworth.)

Q. Will you kindly read Respondents' Exhibit A-5? A. Yes, sir. [219]

(Witness reads Respondents' Exhibit A-5.)

Q. Mr. Killingsworth, did the SS "George Flavel" come under the service agreement or agency agreement with the Alaska Steamship Company by virtue of this letter you have just read?

A. Yes, sir.

Q. Was it under that status as of June 23, 1943, and subsequent thereto, on the trip to Kiska, Attu, Honolulu and return to Seattle?

A. Yes, sir.

The Court: I wish you would simplify that question.

Q. Has it remained at all times continuously under that status since allocation to the Alaska Steamship Company by the War Shipping Administration?

A. There has been no change in the nature of the allocation.

Q. It is so at the present time?

A. It is so at the present time.

Mr. Franklin: That is all.

The Court: What do you mean by all of that?—what status?

The Witness: As applied to the ship from the beginning of its allocation to the company, and still so applies.

Mr. Franklin: If the Court please, the General Agency Agreement contemplates that from time

(Testimony of V. W. Killingsworth.)

to time vessels will be constructed and then assigned to the General Agent to operate under the General Agency Agreement, and the purpose of the last interrogatory was to establish that pursuant to these letters of allocation this vessel actually was operated upon date of [220] delivery by the Alaska Steamship Company, as General Agent, at all times to and including the present time.

The Court: You may cross examine.

Cross Examination

By Mr. Levinson:

Q. Mr. Killingsworth, as far as the general operation of the vessel is concerned, compared with the Baranof, the Depere, and all of the vessels that you owned at the time of the commencement of the war, as far as a practical matter is concerned you still operate those as your own ships, don't you?

A. They are operated in exactly the same manner as vessels of the same type and owned by the Administration, like the "George Flavel".

Q. It is only a question of accounting, isn't it?

A. No; they could not be compared that way.

Q. Is there any practical difference in the way the men sign on? They still sign on before the Shipping Commisisoner, and the only difference is that your cargo is designated, and you are not on a regular route, you go where you are told to go?

(Testimony of V. W. Killingsworth.)

Mr. Long: There are four questions there, as I counted them.

The Court: Yes; that objection is sustained. Simplify the question.

Q. You still employ the members of the crew in the same manner, do you not, as you did prior to the execution of the agreement?

Mr. Franklin: That is objected to upon the ground [221] that the General Agency Agreement is the best evidence.

The Court: The objection is overruled.

A. That situation is covered in the General Agency Agreement. They are hired for the account of the War Shipping Administration.

Q. That is what the General Agency Agreement may say, but I am asking you about the men signing on the ship. You know when they sign on you do not hand them a copy of the General Agency Agreement? A. That is right.

Q. There is no copy of the General Agency Agreement in the Shipping Commissioner's office?

A. There has been no change I know of, other than the fact there is some difference in the wording of the Articles. I am not entirely familiar with it, but it is covered in that way.

Q. You do not tell the men when they go to work on your ship that you work under a general agency agreement, do you?

A. No, although it is general knowledge that they are working—

(Testimony of V. W. Killingsworth.)

Q. Just answer the question.

The Court: Objection overruled to that answer.

The Witness: Do you wish me to proceed?

Mr. Franklin: Yes.

The Witness: It is common knowledge that on vessels operating under General Agency Agreement, or bare boat, as they are called, the employees aboard such vessels are employed by the United States.

Q. Did you, or any member of your organization, to your knowledge, ever advise these men at the time that they [222] signed on that they were operating under a General Agency Agreement?

A. Not to my knowledge.

Q. Do you know of any regulation in your firm which requires the Shipping Commissioner to be advised of the fact that these men are operating under a General Agency Agreement at the time that they sign on? Is there such a regulation?

A. There would be no regulation in our firm that would have any effect upon the Shipping Commissioner.

Q. At least you do not advise the Shipping Commissioner of that fact, do you, to tell these men they are working under a General Agency Agreement?

A. I am not in a position to say that. I am not familiar with the details of the operation.

Q. With reference to the operation of the vessel on various voyages, it is no different than any other line or custom of the Alaska Steamship Company?

(Testimony of V. W. Killingsworth.)

That is, they have cargo, and they are told where they want it to be picked up and delivered?

Mr. Long: The question is unintelligible, your Honor.

The Court: On account of the increasing cold affliction of several connected with the trial, you can stand if you wish to do so. Each side may have that privilege.

Q. The operation of the vessel is practically no different under present conditions, except you only have one customer, and that is Uncle Sam?

A. May I elaborate on that?

Mr. Long: Just a minute. There are two questions [223] there. Counsel says the operation is no different and they have only one customer. I think he should ask a specific question.

The Court: The objection is sustained.

Q. The operation of the vessel is no different now than it was prior to the war, except that you are now operating primarily for one customer?

A. I can hardly answer just "yes" or "no" to that question.

Q. You perform the duties of a ship's agent, and treat the ship in every respect as your own vessel, except that you must account differently under this General Agency Agreement, is that right?

A. Not entirely, no.

Q. Tell us in what way it differs.

A. In this respect, that before the War Shipping Administration took over the vessels, or req-

(Testimony of V. W. Killingsworth.)

quisitioned the vessels, we operated the vessels as we saw fit, depending on the cargo and passengers offered for the vessels. Since the requisitioning of the vessels the facilities of each vessel have from voyage to voyage been allocated by the War Shipping Administration, or the use of the vessel by the company has been performed with the consent or approval of the War Shipping Administration. That makes quite a difference.

Q. All right. Then the only difference is that the person who has the use of the vessel, in this instance has the entire use of the vessel, and because of that entire use he designates what voyages should be made and when the voyages should be made, is that right? A. That is right. [224]

Q. Then other than that there is substantially no difference from the prior operation. You do not have to go to the War Shipping Administration every time you want to do anything, do you?

A. Well, I have. Here at Seattle that is just about necessary, from what I have heard at Seattle.

Q. That is all you know about it is what you have heard?

A. It is necessary to consult the War Shipping Administration. Not every turn of the wheel to them, but a great many.

Q. What things do you consult the War Shipping Administration about?

A. About the use to which the vessel is to be put, about the maintenance and repair of the vessel, and we have to submit for approval to the

(Testimony of V. W. Killingsworth.)

War Shipping Administration the personal record forms of all of the licensed officers of the ship.

Q. That is after they are employed?

A. Yes. They are employed subject to approval by the Government.

Q. You placed P. I. insurance on this vessel with your usual underwriters, by virtue of this letter? A. That is right.

Q. You have the same protection under that insurance as you normally had?

A. The policies extended to apply to the War Shipping Administration.

Q. That is the only difference, you have an additional assured?

A. Marine insurance is a field of its own, and I hesitate to answer any questions in that respect.

Q. Exhibit A-3 indicates you must place that?

A. Yes.

Q. You must carry insurance for the War Shipping Administration as an additional insured?

A. I understand that.

Q. And that is placed with a commercial company, the P. & I., such as this is?

A. Protection and indemnity insurance.

Q. The P. I. insurance that you place is placed with commercial underwriters, as advised in that letter? A. That is right.

Q. And the premium or the fee for this P. I. insurance is charged as a legitimate charge on your account to the War Shipping Administration, as agent, isn't it? A. That is right.

(Testimony of V. W. Killingsworth.)

Q. And the only difference is that the form of policy is required to meet the approval of the War Shipping Administration?

A. I am not familiar with the form of policy.

Q. And the P. I. insurance covers this particular matter we are in right now?

A. That is right.

Mr. Levinson: That is all.

Mr. Franklin: That is all.

(Witness excused)

Mr. Long: The next deposition we have, your Honor, is that of John Kristiensen, taken on June 22, 1944. [226]